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HOW INDIA IS GOVERNED

SURVEY OF CONSTITUTION AND ADMINISTRATION



BY

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PREFACE

THE study of the system of government of India has acquired great importance in recent years. The complexity of the problem has been steadily increasing and the need for a careful and patient examination of its chief features has become paramount. Though the war in Europe has thrown out of gear the normal machinery of government in the majority of the provinces and has indefinitely postponed the adoption of an All-India Federation, it cannot be denied that, sooner or later, India's best talent will have to address itself to this problem.

In writing this book my chief aim has been to examine the growth of the Indian Constitution and the Administrative machinery, with special reference to the working of the new constitution in the provinces. I am convinced that purely legalistic studies based on a perusal of the different sections and clauses of the Government of India Act, 1935, are not only inadequate but are positively misleading. It is only in the light of the working of Provincial Autonomy that the nature of the new constitution, both Provincial and Federal, can be properly appreciated.

I have throughout endeavoured to preserve a balanced judgment, avoiding eulogies of unstinted praise or tirades of abusive criticism. Education consists not in stuffing the mind with ill-digested facts

and ready-made criticisms but in developing a technique of correct thinking. Hence, I have avoided mere felicity of phrase and have preferred arguments to choice expression. In examining topics like the proposed Federation, Special Responsibilities of the Governors and the Governor-General, Communal Electorates, Second Chambers in the Provinces, Separation of Executive and Judicial Powers and a number of such controversial matters, I have taken care to analyse the issues involved before formulating my own conclusions.

I have made free use of the Montagu-Chelmsford Report, the Simon Commission Report and the Joint Parliamentary Committee Report; for it is my conviction that some of the brilliant passages of these reports deserve to be read and mastered by every serious student of Indian Administration, even though he may not always be in agreement with the conclusions of their authors.

I hope this book will be of use to the rapidly increasing body of intelligent citizens and to students preparing for University and College examinations.

*Elphinstone College,
Bombay, June, 1940.*

. S. PARDASANI

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CHAPTER I

THE GROWTH OF INDIAN CONSTITUTION AND ADMINISTRATION

INTRODUCTORY

IMPORTANCE OF THE SUBJECT For the proper understanding of the present system of administration in this country, it is necessary to make a brief historical study of the Constitutional development of India since the establishment of the rule of the East India Company. The pre-British period of Indian history has little constitutional or administrative significance, but ever since the East India Company, which was at first a purely trading corporation, undertook, in 1765, the responsibility of administering the Dacani of a few parganas, which roughly constitute the modern provinces of Bengal, Bihar and Orissa, there has been a thread of continuity and a principle of more or less orderly progress running through the growth of our administrative system. That does not, however, mean that from the beginning any enlightened political ideals consistently guided the policy of the Company's representatives. Their primary aim, at first, was merely to consolidate their own position and derive as much material gain out of their conquests and possessions as they could. Only as late as 1917 was the principle of "gradual development of self governing institutions" laid down. It is now established

beyond all doubt that the final goal of British policy in India is the attainment of Dominion Status. Viewed from this standpoint, the study of India's constitutional history derives additional interest as being a progressive approximation to the principle of self-government and has a vital significance in the understanding of the present constitution, which itself is yet a stage in the journey towards that goal.

ITS MAIN DIVISIONS

The history of India's constitutional growth can be divided into three main periods. The first, from 1765 to 1858, was the period of the East India Company's rule—a period which was essentially formative in character and which laid down the foundations of our administrative system. It, however, marked the growth of Parliamentary control over the political affairs of the Company and after the Indian Mutiny of 1857, the Crown assumed full political control over the Government of India. The second period from 1858 to 1917 marked the establishment of supremacy of Parliament over the authorities in India, concentration of administrative, legislative and financial authority in India in the hands of the Central Government, the growth of legislatures and the awakening of political consciousness in the minds of Indians whose aspirations for self-government were conceded in principle by the Announceement of August 1917. The Reforms of 1919 which were based on that Announceement opened a new chapter in India's Constitutional development, and the years following the introduction of these Reforms have witnessed a rapid growth of events leading to the final acceptance of Dominion Status as the goal of British policy in India.

I

The First Period—1765 to 1858—The Period of
Company's Rule

1 THE SUPREMACY OF THE COMPANY

EXPANSION OF
COMPANY'S RULE. The conquest of India by the East India Company was a gradual process. The Company being primarily a mercantile body was not at first either able or willing to assume the duties of a political sovereign by bringing territories under its control {Even after the assumption of *Durani* in 1765, the Company found its political duties rather embarrassing though lucrative. Time and again, the Court of Directors enjoined the Company's representatives in India to desist from acquiring more territory and declared that "to pursue schemes of conquest and extension of dominion are measures repugnant to the wish, the honour and policy of this nation." But such declarations were of no avail. The additional 'patronage' which every accession of territory brought to the Directors, the ambitious and aggressive policies pursued by some of the Company's servants and the political and social disorder prevailing in India after the break-up of the Moghul Empire and more particularly after the defeat of the Marathas at the Third Battle of Panipat in 1761, served to increase the Company's dominions in India. There is some truth in the remark of the great British historian, Sir John Seeley who said 'Our acquisition of India was made blindly. Nothing great that has ever been done by Englishmen was done so unintentionally, so accidentally, as the conquest of India.' By 1857, the Company had become the virtual master

of the whole of India. But, while it had directly assumed the administration of what is called British India, the native princes, who were allowed to continue in the enjoyment of their States, were made to recognise the "Paramountcy" of the Crown and to conclude military and subsidiary alliances with the British.

FIRST EXPERI- The Company's first attempt at orga-
MENTS IN nising administration in India was
ADMINISTRATION full of grave defects. The Directors had from the beginning regarded their acquisition in India as a source of profit and power; hence, opportunity was taken to collect the maximum of revenues and secure the utmost commercial concessions for the Company without consideration of the consequent impoverishment of the people of India.

The services were manned by "hangers-on and younger sons of noble or rich families" who came from England with the express object of attaining easy fortunes; they, therefore, "regarded their appointments as an excellent mode of acquiring control of the trade of the district and making a rapid fortune."* Even the British Parliament desired "to share in the plunder." No wonder, therefore, that the consequences for India were disastrous.

GROWING The British Parliament had from the
JEALOUSY
OF PARLIAMENT. very start looked upon the transformation of the East India Company into a political body with jealousy. It was, indeed, astonishing that a few commercial agents should govern vast territories and have all the attendant political power and prestige. It was impossible for Parliament to allow

* A. B. Keith, *A Constitutional History of India*, p. 58

it to carry on thus for long when therefore the East India Company was in financial difficulties and begged the government for a loan Parliament utilised the opportunity to restrict the Company's political powers and to assert its own right to control the Company's government in India by passing the Regulating Act of 1773

2 LORD NORTH'S REGULATING ACT OF 1773

ITS MAIN PROVISIONS

The Regulating Act was the first piece of Parliamentary legislation extending to the Government of India as such it was a precedent of great path and moment Its comprehensive character can be seen from its following main provisions

(1) It required the Court of Directors to send to the Treasury within fourteen days after receipt, copies of all correspondence regarding the revenues of India and to send all dispatches connected with civil and military affairs to a Secretary of State

(2) It altered the Company's constitution at home by raising the qualifications for a Proprietor and by prolonging the period for which the Directors were elected thereby simplifying the organisation of the Company in England. -

(3) It changed the designation of the Governor of Bengal to Governor General and asserted his supremacy over the Governors of Bombay and Madras, particularly in matters of declaration of war and negotiation of peace thereby modifying a glaring defect in the old system in which the three presidencies were quite independent of one another and were separately responsible to the Court of Directors

(4) The Governor-General of Bengal was provided with a Council of four members all of whom were named in the Act and who were to hold office for five years and could be removed only by the King. This was an attempt at checking the powers of the Governor-General who was the servant of the Company by having non-servants of the Company to watch his actions. The decisions of a majority of the Councillors were made binding on the Governor-General.

(5) A Supreme Court in Calcutta was established by a Royal Charter and all Regulations made by the Governor-General in Council were to be registered and published in this Court.

(6) The Services were given higher salaries and were prohibited from engaging in private trade or from extorting bribes and accepting presents.

ITS CONSTITUTIONAL IMPORTANCE Thus, with one stroke Parliament "altered the constitution of the Company at home, changed the structure of the Government in India, subjected in some degree the whole of the territories to one supreme control in India, and provided in a very efficient manner for the supervision of the Company by the Ministry."* It is strange that a political philosopher of the acumen of Edmund Burke characterised the Act as "an infringement of national right, national faith and national justice." This view was not shared by his contemporaries. As time passed, the clamour for Parliamentary intervention in the Company's political functions increased rather than diminished. It may, however, be admitted that the Regulating Act of 1773 was a very crude

* Keith, *Op. Cit.* p. 70

attempt at providing a satisfactory governmental machinery for India. It violated "the first principles of administrative mechanics"* It provided a system of checks and balances which made the smooth working of the constitution very difficult. "It created a Governor General who was powerless before his own Council and an Executive that was powerless before a Supreme Court". The extent of control exercised by the Governor General over the presidencies of Bombay and Madras was also very small. These anomalies led to further intervention by Parliament.

3 PITT'S INDIA ACT 1784

CHANGES
IN HOME
GOVERNMENT

The Act of 1784 set up a Board of Commissioners for the Affairs of India generally known as the Board of Control. It consisted of six members—the Chancellor of the Exchequer, a Secretary of State and four Privy Counsellors appointed by the King and holding office during his pleasure. To this parliamentary body was now transferred "the superintendence, direction and control of all acts, operations and concerns which in any wise relate to the Civil or Military Government or revenues of India." The Court of Proprietors and the Court of Directors continued to manage their commercial affairs as they liked but in matters *political* they were subject to the control of this Board. "Full access was given (to the Board) to the Company's records, its dispatches from India must be submitted to it and dispatches out could only be sent with its consent and altered at its desire while it might require its orders to be sent without the Directors' con-

* Montagu Chelmsford Report p. 17

10p. Cit. p. 17

currence."‡ The Court of Proprietors could not alter any decision of the Directors approved by the Board.

CHANGES IN INDIA. The Act also introduced some changes in the constitution of Governments in India. The number of members of the Governor-General's Council was reduced to three; the Governors of Bombay and Madras got similar councils of three each; the Governor-General and the Governors received the right of a casting vote. The powers of the Governor-General over the minor presidencies were further extended to ensure real subordination.

EFFECTS Thus the Act made certain far-reaching changes both at home and in India to improve the working of the Government. Its glaring omission was, however, remedied in 1786 when power was given to the Governor-General to over-ride the decisions of his Council. The Board of Control set up by it continued in name up to the year 1858, but all real power became concentrated in its President.

4. THE CHARTER ACTS OF 1793 AND 1813

The right to renew the commercial privileges of the East India Company embodied originally in a Royal Charter was availed of by Parliament to tighten its control over the political affairs of the Company. Thus at intervals of twenty years, the Charter Acts of 1793, 1813, 1833 and 1853 were passed.

THE CHARTER ACT OF 1793 The Charter Act of 1793 did not introduce any changes, except those of detail, in the administration; the only impor-

‡ Keith, *A Constitutional History of India* p. 96.

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tant change embodied in it was that the King's approval was henceforward to be necessary for making appointments of the Governor General the Governors and the Commander-in-Chief

THE CHARTER ACT OF 1813

The Charter Act of 1813 while allowing the Company to remain in actual possession of their dominions in India asserted the undoubted sovereignty of the Crown in express terms. It introduced minor changes in the administration made improvements in the recruitment and training of the civil servants and set aside a lakh of rupees every year for the improvement of education in India.

5 THE CHARTER ACT OF 1833

ITS MAIN PROVISIONS

The Charter Act of 1833 was characterised by Lord Morley as 'certainly the most extensive measure of Indian Government between Mr Pitt's famous Act of 1784 and Queen Victoria's assumption of the Government of India'. Its main provisions could be summed up as follows —

(1) It required the Company to wind up its commercial transactions

(2) It laid down that the Company's territories in India were held by it 'in trust for His Majesty's heirs and successors'

(3) It deprived the Presidencies of Bombay and Madras of independent legislative powers and authorised the Governor-General in Council to legislate for the whole of India

(4) It provided for the appointment of a fourth member, being an expert in law, to the Council of the Governor General to assist in the drafting of laws

(5) It recommended that the diverse laws prevailing in India should be codified and accordingly a Law Commission with Lord Macaulay, the first Law Member, as its President was set up.

(6) It gave a definite promise to Indians that "no native or natural born subject of the Crown resident in India should by reason only of his religion, place of birth, descent, colour or any of them, be disqualified for any place in the Company's service."

6. THE CHARTER ACT OF 1853 AND AFTER

THE CHARTER ACT OF 1853 The Charter Act of 1853 allowed the Company to govern "only until Parliament shall otherwise provide." It deprived the Court of Directors of "patronage" and threw open the Civil Service to competition.

THE INDIAN MUTINY AND THE GOVERNMENT OF INDIA ACT, 1858 Matters suddenly came to a head with the outbreak of the Indian Sepoy Mutiny in 1857. The blame for it fell on the Company and Parliament decided to relieve the East India Company of its political responsibilities by transferring the dominions to the Crown. This was done by the Government of India Act, 1858. It brought the period of Company's rule in India to a close.

7. CONCLUSION

Before passing on to the study of the next period, it would be appropriate to sum up the achievements of the Company's rule in India. Expansion of British rule in India, the gradual tightening of Parliamentary control over the Company's political functions, and the beginnings of concentration of authority relating to the Government of India in the hands of the Governor-

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General have already been noticed. To these we may add that during this period the problem of providing an effective government capable of maintaining law and order was solved though not without initial blunders, by slow degrees an efficient 'covenanted' service of character, ability and experience was evolved out of the older system of pure jobbery and corruption; a working settlement of land revenue, and organisation of civil and criminal justice were effected in order to ensure the provision of a just government; the extirpation of human sacrifice, the extinction of slavery, the abolition of Sati and Infanticide and the suppression of *thuggee* laid the foundation of a humane social system, measures of famine relief and construction of public works were undertaken, the adoption of the Western system of education and the recognition of the right of Indians to places in the Company's service though imperfectly conceded were valuable beginnings for the political advance of the people of India. The amount of spade-work done by the Company's first administrators is likely to be ignored by those who judge it by what it did not do. In that age when colonies were still regarded as 'plantations' to be exploited by the mother country, this record, though not exactly flattering, deserves just appreciation.

II

The Second Period—1858 to 1917—The Period of Parliamentary Supremacy

DIRECT CONTROL OF THE CROWN The Government of India Act, 1858, transferred the control over the Government of India from the Company to the Crown. The powers of the Court of Directors and the Board of

Control were henceforward vested in a Secretary of State who as a member of the British Cabinet was, in accordance with constitutional practice, responsible to Parliament.

1. NATURE OF PARLIAMENTARY CONTROL

ITS LEGAL SUPREMACY AND PRACTICAL INDIFFERENCE

Though the legal supremacy of Parliament over Indian affairs was complete and it was open to Parliament to exercise control either by means of legislation or by requiring its approval to rules made under delegated powers of legislation; or by controlling the revenues of India; or by exercising its very wide powers of calling the Secretary of State for India to account for any matter relating to Indian administration, actually Parliament did not do so. It took little interest in matters Indian. Preoccupation with affairs at home, in Ireland and on the continent; the great distance from India, the difficulties of communication and the gross ignorance of Indian conditions on the part of an average member of Parliament made it less and less willing to interfere in Indian matters. On the other hand, the press, the telegraph, the improved means of communication, the steady advance of India to Western methods and standards of administration, and the beginnings of representative institutions in India helped to promote a feeling that India's welfare was generally safe in the hands of the Indian Government. It was, indeed, a paradox that "Parliament ceased to assert control at the very moment when it had acquired it."* It, however, asked for a report on the moral and material progress in India to be laid before it every year, and the Secretary of State was

* Montagu-Chelmsford Report, p. 29.

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required to submit accounts once a year 'when a perfunctory debate attended by a handful of members with Indian interests convinced resentful Indian visitors to the Commons of the complete indifference of the British people to Indian affairs'*

2 THE SECRETARY OF STATE FOR INDIA AND HIS COUNCIL

THE APPOINTMENT OF THE COUNCIL.

With Parliament as a "sleepy guardian" the Secretary of State for India came to be the *de facto* head of the Government of India. In order, however, to provide him with experienced advice on Indian questions, the Secretary of State was given the assistance of a Council of fifteen members of whom eight were appointed by the Crown and seven by the Directors. Vacancies in the future were to be filled by the Crown. The members held office during good behaviour but could be removed if both houses of Parliament presented an address to His Majesty. In order to prevent them from taking active part in party politics, it was provided that members of the Council could not sit in Parliament.

ITS FUNCTIONS AND POWERS

The functions of the Council were purely advisory and the Secretary of State could normally overrule his Council but in one matter, namely, the spending of Indian revenues, he was bound by the decision of his Council. A number of factors, however, tended to make the Secretary of State practically independent of any check of the Council. His powers of appointing members to the Council, carrying on secret correspondence

* Keith, *A Constitutional History of India*, p. 170

on matters of urgent importance with the authorities in India and calling the different secretaries of the various departments to present cases before him without the knowledge of the members of the Council, soon made his position one of distinct superiority.

3. THE SECRETARY OF STATE AND THE GOVERNMENT OF INDIA

THE LEGAL SUPREMACY OF HOME GOVERNMENT.

The Secretary of State representing the Crown and the British Parliament was legally supreme over all authorities in India. He was charged with the "superintendence, direction and control of all acts, operations, and concerns which in anywise relate to the Government or revenues of India." The Governor-General was, on the other hand, required to pay due obedience to all such orders as he might receive from the Secretary of State. The extent to which the latter exercised these powers depended on the personal relations existing between him and the Governor-General. Normally, the Secretary of State would attach great importance to the judgment of the Governor-General who as 'a man on the spot' would be acquainted with local conditions; difficulties of distance and communication were additional difficulties in exercising control from England. While all this might be conceded, there could be no doubt that in case of a sharp difference of opinion between the Secretary of State on the one hand and the Government of India on the other, the former was legally supreme. The Governor or Governor-General, as the case might be, had either to submit, or tender his resignation.

TWO
INSTANCES

At least on two important occasions this principle was emphasised and enforced beyond all doubt. When Lord Mayo's Government as a whole protested against being required to pass the Bills which became the Contract Act and the Evidence Act, in the shape in which the Secretary of State approved them, on the ground that such a course deprived the legislative Councils of all liberty of action, the Home Government laid down the principle that "the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself." They further said "The Government established in India is (from the nature of the case) subordinate to the Imperial Government at Home. And no Government can be subordinate unless it is within the power of the superior Government to order what is to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obedience to its directions as to the use which they are to make of official position and power in furtherance of the policy which has been finally decided upon by the advisers of the Crown." Again when Lord Northbrook's Government attempted in 1874 to assert their independence in fiscal matters, the British Government were equally firm in asserting their constitutional rights.

THE NEED FOR
SUCH CONTROL

The *raison d'être* of this control from above was the absence in India of any popular check on the actions of the Government. Parliament as the guardian of the interests and wel-

fare of the masses in India could not surrender any part of its control over the Indian authorities.

RELATIONS IN PRACTICE

In practice, however, the relations between Simla and Whitehall varied with the "personal equation." If sometimes Viceroys of India were treated as "agents" of the British Government, there were occasions on which Viceroys regarded Secretaries of State as the "convenient mouthpiece of their policy in Parliament."

4 THE GOVERNMENT OF INDIA

GOVERNOR- GENERAL BECOMES VICEROY.

The transfer of control over the Government of India brought about a change in the position of the Governor-General who was also, thereafter, styled officially as the Viceroy. In that dual capacity he was "the direct representative of the Crown as well as the authority directed to control, superintend and direct the civil and military administration of India, with the aid of his (Executive) Council."*

ENLARGEMENT OF THE EXECUTIVE COUNCIL.

The Governor-General's Executive Council was considerably enlarged during the following years. The Charter Act of 1833 had already added a fourth member to assist the Governor-General in Council in the drafting of laws. At first, he was entitled to attend and vote only in those meetings of the Council in which legislation was under consideration, but the Charter Act of 1853 made him a regular member of the Governor-General's Executive Council. The Councils Act of 1861 raised the number of members to five

* Keith, *A Constitutional History of India*, p. 171.

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by adding a financial expert In 1874, an additional member in charge of Public Works was appointed

PORTFOLIO SYSTEM

During these years the Governor-General availed himself of the powers given to him in 1861 to make rules for the conduct of business to develop the "Portfolio System" by which each member of the Executive Council was given charge of one or more departments, and the Council, as a whole, would meet only to discuss questions of general policy or questions which involved the overruling of Provincial Governments or matters on which there was difference of opinion between the Member-in Charge and the Governor General

GOVERNOR GENERAL'S POSITION

The Governor-General having the right, since the Act of 1786, to over ride the decisions of his Council acquired a dominating position in the Executive

5 CONCENTRATION OF AUTHORITY AT THE CENTRE

SUPREMACY OF THE CENTRAL GOVERNMENT

The transfer of control to the Crown carried forward the process of centralisation whose first beginnings had been made as early as the Regulating Act of 1773 The Provincial Governments were reduced to the position of agents of the Government of India and the entire system of government was, in theory, "one and indivisible" In administrative matters, every local government was required to obey the orders of the Governor General in Council, and to keep him constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to him or as to which he required information,

and was under his superintendence, direction and control in all matters relating to the government of its province. In finance, provincial expenditure, provincial taxation and provincial borrowing were all subject to central control. The Governor-General in Council also controlled legislative action in provincial Councils by means of "instructions"; Bills introduced in a Provincial Council required the previous sanction of the Governor-General as well as his final assent. It would, therefore, be correct to say that "whether from the administrative, the financial or the legislative point of view, the concentration of authority at the centre was a cardinal feature of the pre-Reform constitution."^{*}

PROVINCES WERE AGENTS	Such transfer of power, legislative administrative or financial, as was made over in practice to the provincial Governments was in the nature of delegation; there could be no question of any exact delimitation of functions and there could also be no doubt that such powers as were given to the provinces could be withdrawn at any time. The subordination of the provinces to the Centre was, in theory, complete.
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6. THE GROWTH OF LEGISLATURES

A salient feature of the period under study was the growth of legislatures—Central and Provincial—in India.

DIFFERENTIATION OF EXECUTIVE AND LEGISLATIVE FUNCTIONS	The function of <i>legislation</i> was not at first differentiated from that of <i>administration</i> and the legislative power was not recognised as residing in a legislature as distinct from the Governor-
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^{*}Simon Commission Report, Vol I, p. 111.



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ment. When new laws had to be made, they were enacted by a body the nucleus of which was the Executive Council itself, but to which additional members were summoned for the express purpose of passing those laws. The Viceroy or, in the case of a province the Governor, presided over legislative discussions, no less than over executive consultations. The germ of the present legislatures in India lies in the gradual extension of those Executive Councils.

ENLARGEMENT OF THE COUNCIL BEFORE 1853

The process was begun by the Charter Act of 1833 by which a Law Member was added to the Governor-General's Council for legislative purposes only. The Charter Act of 1853 made him a full member and provided that six additional members—the Chief Justice and another Judge of the Bengal Supreme Court, and four officials appointed by the Governments of Madras, Bombay, Bengal and Agra—should sit in the meetings of the Executive Council when it dealt with legislation.

THE INDIAN COUNCILS ACT OF 1861

In 1861, the Councils Act raised the number of additional members to twelve and half of these were to be nominated non-officials, a few Indians thus got an opportunity to participate in the legislative functions of the Council. That Act also restored to the Governments of Madras and Bombay the powers of legislation which the Act of 1833 had withdrawn. The powers of the new "legislatures" were extremely limited. They were not in any sense "miniature parliaments" and did not by any stretch of imagination contain any germ of responsible government. Their function

related merely to passing laws subject to the previous sanction and final assent of the Governor-General. They were aptly described by Lord MacDonald as "Committees for the purpose of making laws—committees by means of which the Executive Government obtains advice and assistance in their legislation." They were not deliberative bodies; they could not enquire into grievances or call for information or examine the conduct of the Executive.

THE INDIAN
COUNCILS
ACT, 1892

The Indian Councils Act of 1892 went a step further by increasing the number of additional numbers to sixteen and by authorising the making of regulations by which non-official members might be nominated. Bodies like the provincial legislative Councils and the Calcutta Chamber of Commerce were asked to submit names, and though they had no binding effect, in practice they were always adopted. Thus, a kind of *indirect election* was introduced though the use of the word 'election' was carefully avoided. There was, however, no approach yet to a parliamentary system. Lord Dufferin described the scheme as "a plan for the enlargement of our provincial councils, for the enhancement of their status, the multiplication of their functions, the partial introduction into them of the elective principle, and the liberalization of their general character as political institutions."

MORLEY-MINTO
REFORMS, 1909

The Morley-Minto Reforms of 1909 marked a further stage in the development of India's legislatures. The legislatures were considerably enlarged; majorities of non-officials were created in the provincial councils; the principle of

election was definitely accepted and the Muhammadan community was granted separate electorates. The legislatures also got additional functions and powers, they could by moving resolutions discuss administrative matters and by asking supplementary questions cross-examine Government on its replies to questions. But the changes introduced did not affect the old conception of the Councils. As the Montford report put it, 'the Morley Minto Reforms in our view are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and only occasionally vigilant democracy), which might as it saw fit for the purposes of enlightenment consult the wishes of its subjects.' The concept of Responsible Government had not yet informed or guided the composition of our legislatures. Lord Morley who had piloted these changes himself disclaimed that they had anything to do with the development of responsible government. Responsibility which is the "savour of popular government" was wholly lacking in the Councils.

7 POLITICAL DISCONTENT IN INDIA AND THE POLICY OF ASSOCIATION

POLITICAL
AWAKEN
ING IN INDIA. While the British were consolidating their rule in India by organising the system of administration and establishing law and order, India's political consciousness began to increase. A common government, a uniform system of laws, the liberalising influence of Western education specially that of English literature and history, the growth of speedy communications and means of transport and above all the cementing influence of a common tongue—the English language—gave India

a sense of unity and national integrity which it had, perhaps, never attained before. Knowledge of England's own democratic traditions and study of European and American histories awakened a desire for self-government in this country. It first took the shape of agitation on narrower issues but with the lapse of time, the issues became broader and broader. The Indian National Congress, founded in 1885, was at first a moderate political organisation concerned with demands which now appear ridiculously low—e.g., the presence of elected members in the Councils, the right to ask questions and discuss the budget and the limitation of military expenditure.

**THE NATURE OF
THE INDIAN
PROBLEM.**

The British from the very beginning failed to appreciate the strength of the influence which their own constitutional ideas had exercised over the educated classes in India. The problem had been created by their very success in providing a stable and sound machinery of Government.

The following remarks of the Joint Parliamentary Committee, 1934, are very illuminating in this connection:

"We have emphasised the magnitude of the British achievement in India because it is this very achievement which has created the problem which we have been commissioned by Parliament to consider. By transforming British India into a single Unitary State, it has engendered among Indians a sense of political unity. By giving that State a Government disinterested enough to play the part of an impartial

arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic divisions it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions. By establishing conditions in which the performance of the fundamental functions of Government, the enforcement of law and order and the maintenance of an upright administration, has come to be too easily accepted as a matter of course, it has set Indians free to turn their minds to other things, and in particular to the broader political and economic interests of their country. Finally, by directing their attention towards the object lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions, that good government is not an acceptable substitute for self-government and that the only form of self government worthy of the name is government through Ministers responsible to an elected legislature "•

POLICY OF ASSOCIATION

Instead of recognising the legitimacy of these demands the British turned a deaf ear and pursued a policy of Association whereby a few Indians were associated with the administrative and legislative bodies. Some Indians were appointed to the higher posts in the civil services, others were admitted to the Executive Councils of the Governors and the Governor-General, and the number of Indian members in the legislatures was increased from time to time. This policy failed to satisfy the more ad-

vanced sections of the population and a definite conflict of opinion, therefore, became visible.

8. THE DECLARATION OF AUGUST 1917

THE GREAT WAR, 1914-18. The beginning of the Great War in Europe in 1914 changed the whole situa-

tion. The Princes and Peoples of India made an excellent contribution by way of men and money to help the cause of Great Britain; moreover, that War was fought by Great Britain with slogans of "making the world safe for democracy" and "self-determination" and it was only natural that India should receive in principle what England appeared to be fighting for!

ANNOUNCEMENT OF AUGUST 1917. On 20th August, 1917, the following announcement concerning the future

constitution of India in Parliament was made by the Secretary of State for India. As it laid down the final goal of British policy in India, and turned a new Chapter in the constitutional development of this country, it deserves to be studied in extenso.

"The policy of His Majesty's Government with which the Government of India are in complete accord, is that of *increasing association* of Indians in every branch of the administration and the *gradual development of self-governing institutions* with a view to the *progressive realisation of responsible government* in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Gov-

ernment have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others

"I would add that progress in this policy can only be achieved by *successive stages* The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the *time and measure of each advance*, and they must be guided by the co operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility

"Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course of Parliament." (Italics mine)

III.

The Third Period—1917 to 1940—The Period of Gradual Development of Responsible Government

CONSTITUTIONAL
IMPORTANCE OF
THE ANNOUNCE-
MENT OF AUGUST
1917

The Declaration of August 1917 ushered in a new era in the constitutional development of India The British Government for the first time accepted that the final goal of British policy in India was 'the gradual development of *self governing* institutions with a view to the progressive realisation of *responsible government* in India' (Italics mine) Hitherto, the British statesmen had not only

scrupulously avoided the use of such expressions as "responsible government" with reference to India, but had even resented the suggestion of such a development being likely. Lord Morley, the Secretary of State for India in 1909, while proposing his reforms in the Government of India definitely asserted that his proposals had nothing whatsoever to do with the evolution of responsible government. He remarked, "If it could be said that this chapter of reforms led directly or indirectly to the establishment of a parliamentary system in India, I, for one, would have nothing at all to do with it."

1. THE MONTAGU-CHELMSFORD REPORT

PRELIMINARY INQUIRY. The Declaration was, therefore, lustily cheered in India as the recognition—

rather belated—of the fundamental right of the Indian people to govern themselves. While the general hopes of an immediate grant of substantial measure of self-government came to be pitched very high, there were some who regarded this promise as a mere "ill-considered piece of war propaganda" which Great Britain might not implement after peace was restored. In order to give practical shape to the announcement, Mr. Montagu, the then Secretary of State for India, came to this country and in the company of Lord Chelmsford, the then Governor-General, toured the country to get first hand knowledge of the political conditions and aspirations of the people of India. On the basis of this study, they made out a Report on Indian Constitutional Reforms, known as the Montagu-Chelmsford (or Montford) Report. It was mainly on the basis of this Report that the Government of India Act, 1919, came to be modelled.

THE GROWTH OF INDIAN CONSTITUTION 27

MAIN CONCLUSION OF THE MONTFORD REPORT The prominent features of the conclusions to which the Joint Authors came are embodied in the following four propositions —

1. There should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control

2. The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit. This involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities.

3. The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matter must remain indisputable, pending experience of the effect of the changes now to be introduced in the provinces. In the meantime the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased.

4. In proportion as the foregoing changes take effect, the control of Parliament and the Secretary of State over the Government of India and Provincial Governments must be relaxed

THEIR CONSTITUTIONAL SIGNIFICANCE

Thus only the first step towards the goal of self-government was recommended. The Joint Authors, however, made it plain that such limitations on powers as

they were proposing were due only to the obvious fact that time was necessary in order to train both the representatives and the electorate for the work which they desired them to undertake; and that they offered Indians opportunities at short intervals to prove the progress they were making, and to make good their claim, not by the method of agitation but by positive demonstration, to the further stages in self-government which they had indicated. Their proposals did not constitute a final solution but only provided a stage on the journey to a goal.

2. THE GOVERNMENT OF INDIA ACT, 1919

ITS PROMINENT FEATURES. In accordance with the main propositions laid down by the Montford Report,

the Act of 1919 had the following prominent features.

(1) It enlarged the size of legislatures and introduced majorities of elected members returned on a wider franchise. The legislatures received additional powers by way of influencing and criticising the Government both at the Centre and in the provinces. They got the power of discussing the Budget before it was sanctioned and of voting on certain demands for grants which were declared *votable*. (2) As the provinces were to be the domain where the first steps towards responsible government were to be taken, rules were made by which a line was drawn between provincial subjects and Central subjects, the provinces alone being normally allowed to legislate on provincial subjects. The provincial subjects were further divided into Reserved and Transferred. A number of subjects like Local Self-Government, Public Health, Education, Sanitation etc. were transferred to the control of Ministers appointed by the Governor of the province from among

the elected members of the Legislative Council of the province. These Ministers were made responsible to the Legislative Council. The remaining subjects like Law and Order, Land Revenue, Finance, etc., were retained by the Governor and were administered by him through the Members of his Executive Council who were not in any way responsible to the Legislature. The principle underlying this division of functions was thus expressed by the Montford Report: "Their guiding principle should be to include in the transferred list those departments which afford most opportunities for local knowledge and social service, those in which Indians have shown themselves to be keenly interested, those in which mistakes which may occur though serious would not be irremediable and those which stand most in need of development. In pursuance of this principle we should not expect to find that departments primarily concerned with the maintenance of law and order were transferred. Nor should we expect the transfer of matters which vitally affect the well-being of the masses who may not be adequately represented in the new Councils, such for example as the questions of land-revenue or tenant rights".* This dual government or the division of control over the affairs of the government is popularly known as Dyarchy. Under it, the two halves of administration remained responsible to different masters, the Ministers being responsible to the Legislature and the Executive Councillors to the Crown. (3) The Central Executive, however, continued to be wholly responsible to the Secretary of State and the British Parliament, the legislature being given powers of criticising and exposing the Executive and discussing

* Montagu Chelmsford Report p. 154

questions of policy. (4) The control of the Secretary of State for India over Indian affairs was completely relaxed in respect of provincial matters "transferred" to the Ministers, except to secure certain specified purposes. In "Reserved" matters in the provinces and in the affairs of the Central Government, the Secretary of State did not ordinarily intervene when the Government and the Legislature were in agreement. Thus while the position of the Secretary of State remained in theory supreme, by a process of convention, his control over Indian affairs was relaxed.

3. THE NON-CO-OPERATION MOVEMENT

DISAPPOINT. The complete irresponsibility of the Executive to the Legislature at the Centre, the transfer of only the less important departments of the Government in the provinces, the inherent difficulties of a dyarchical form of Executive, the retention of nominated members in the Central and provincial legislatures, and the grant of over-riding powers to the Governors and the Governor-General naturally failed to satisfy the aspirations of the politically minded citizens of India who had confidently looked forward to a much more substantial and sweeping grant of power to the people in view of the Declaration of August 1917.

FACTORS LEADING TO NON-CO-OPERATION This disappointment, however, coincided with two other factors, the sufferings of the masses in India due to a rise in prices and failure of the monsoon and the increasing anxiety of the Muhammadans in India who wanted, after the Great War, that the Allies should restore the Sultan of Turkey to his pre-war

position These diverse factors, political, economic and religious, were combined under a joint Non-Co-operation and Khilafat Movement led by Mahatma Gandhi with the assistance of the Ali brothers

The objects of the Non Co operation movement were thus summed up by the Simon Commission —

OBJECTS OF THE MOVEMENT 'The aims of the rank and file of the Khilafat Section of the movement were simple—they were concerned for the political and religious future of Islam Mr Gandhi's objectives were less definite He stood for the ideals and the civilisation of India as against those of Europe, for the cult of the spinning wheel and the simple economies of the village, as against the factories, the railways and the "materialism" of the West But among his allies were many whose political and economic outlook and way of life were European. It is not surprising, therefore, that Mr Gandhi never found it easy to define what "Swaraj" would mean in actual practice, his accounts of it varied from time to time and were always nebulous But the critical side of his doctrine was clear enough Mr Gandhi preached that British Rule had impoverished India and destroyed its liberties The existing Government and all it stood for were "Satanic", and the only cure was to end it."

ITS DETERIORATION AND SUSPENSION The movement was organised on the lines of *non violence* and took the form of 'non-co-operation,' i.e. refusal to pay Government dues and organised mass disobedience to the laws and to the orders of administration, the aim being to paralyse the Government The movement,

though non-violent in the beginning, soon deteriorated and acts of violence against person and property became frequent; the height of violence was reached when "Twenty-one police-constables were murdered with revolting cruelty at Chauri Chaura in the United Provinces by a mob acting under the excitement of the anti-Government movement."

CONGRESS
ENTRY INTO
LEGISLATURES.

The movement had to be suspended and Congressmen who had boycotted the first legislatures (1920-23) elected under the Reform of 1919, decided under pressure from the moderate elements in the Congress led by Pandit Motilal Nehru and Mr. C. R. Das to enter the Legislative Councils. The entry of the Congress in the Legislatures was marked by obstructionist tactics aiming at constitutional deadlocks. The Congress candidates seeking election to the legislatures took a pledge of "uniform, continuous and sustained obstruction with a view to making government through the Assembly and the Councils impossible." The "Swarajists," as these Congressmen were then called secured a striking success at the elections and captured forty-five seats in the Central Assembly. They could not, however, do much as they were easily out-voted in a house of one hundred forty and odd; they were, therefore, compelled to follow a policy of compromise. In the provinces, the success of the Swarajists was not uniform. In Bengal, theirs was the largest party in the legislature and in the Central Provinces they obtained a clear majority. But in accordance with their tactics, they refused to accept Ministerships, systematically withheld all supply for which their consent was necessary and reduced the salaries of Ministers appointed

by the Governor from other parties to Rs 2 per annum. The Governor was thus forced to take over the administration of the transferred subjects, thereby acknowledging the unworkability of the constitution. In other provinces, the Swarajists gave much less trouble and the administration was carried on pretty smoothly

4 THE SIMON COMMISSION AND ITS REPORT

APPOINTMENT OF THE COMMISSION

The attention of India was soon diverted to the appointment of a Royal Commission as provided for

by the Act of 1919. The Act had laid down that at the expiration of ten years a Statutory Commission appointed by His Majesty should inquire into the working of the system of government in India and report as to whether and to what extent it was desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government. A Commission presided over by Sir John Simon was accordingly appointed in 1927 but as its personnel did not include a single Indian it gave rise to protests in this country. The Commission's enquiry was boycotted by many political bodies in India including the Congress, the evidence collected by the Commission was, therefore, not quite representative of the political opinion of the advanced sections in India. A Committee, consisting of the members of the Central legislature, and a number of provincial committees, consisting of the members of the provincial legislatures, were formed to assist the Commission, but their position was definitely subordinate

ITS REPORT. The Report of the Simon Commission was published in 1930 but was condemned as reactionary by the nationalist opinion in India. The chief drawback of the report was that it did not recommend any material advance towards the goal of responsible government at the Centre.

5. THE CIVIL DISOBEDIENCE MOVEMENT AND THE ROUND TABLE CONFERENCES

THE CIVIL DISOBEDIENCE MOVEMENT. Shortly before the publication of the report, the Indian National Congress led by Mahatma Gandhi had launched a Civil Disobedience Movement and the unsatisfactory nature of the Commission's findings imparted additional force to it. The rate at which India's political aspirations were mounting higher and higher left no doubt that the Simon Commission Report would never be accepted by the people of India as a basis for a future constitution of their country.

THE ROUND TABLE CONFERENCES. The British Government accordingly decided to call a Round Table Conference of members of His Majesty's Government and the representatives of India. The British Government took upon themselves the responsibility of selecting India's representatives at this Conference with the result that the people of India did not from the very beginning have any confidence in the so called "representatives"; moreover, the Indian National Congress had already committed itself to a subversive movement of civil disobedience and had, therefore, refused to join the deliberations of the first Round Table Conference which began in November 1930. In the beginning of 1931, Lord

Halifax (then known as Lord Irwin) who was at that time the Viceroy of India persuaded Mahatma Gandhi, by giving him certain assurances embodied in what is known as the Gandhi-Irwin Pact, to suspend the Civil Disobedience Movement and to proceed to London to participate in the Second Round Table Conference. Mahatma Gandhi went to London as the sole representative of the Indian National Congress, he was not, however, impressed with the desire of the British Government to part with power and therefore returned to India only to resume his movement. The Third Round Table Conference was then held towards the end of 1932.

THE EMERGENCE OF FEDERATION

The deliberations of these conferences proved valuable in so far as they led to a frank exchange of opinion between the leaders of the two countries. The difficulties of introducing full responsible government at one stroke became apparent, but by far the most important idea that emerged was the acceptance of the *principle of Federation* as the basis of the new constitution for India. It was realised that it was desirable to bring the Native States in a common organisation at the Centre with British Indian provinces. The Unitary form of government hitherto prevailing in India was declared unsuitable if the States were to be included, and the ideal of an All-India Federation was, therefore, unanimously accepted.

6 THE JOINT PARLIAMENTARY COMMITTEE

THE J P C REPORT

In the light of the discussions at the Round Table Conferences, the British Government laid down the measure of political

advance they were prepared to grant to India, in the form of a White Paper. A Joint Select Committee of the two houses of Parliament, under the Chairmanship of Lord Linlithgow, was appointed to review the question once more. The Committee was assisted by Delegates from India, but it appears that not a single major proposal of the Indian Delegates was accepted. The Report of the Committee was made the basis of the Government of India Act, 1935.

7. THE GOVERNMENT OF INDIA ACT, 1935

ITS PROMINENT FEATURES.

The prominent features of this Act are:—(1) the acceptance of an All-India Federation, (2) the introduction of partial responsibility in the form of Dyarchy at the Centre, (3) the grant of 'autonomy' to the provinces and (4) Safeguards, Reservations, Special Responsibilities, over-riding powers, etc., in the hands of the Governors, and the Governor-General.

ITS REACTIONARY CHARACTER.

The details of the Act are discussed at length in the following chapters. but here it is enough to notice that the whole scheme embodied in the Act of 1935 appeared grossly inadequate from the point of view of transferring any real power to the people. It was regarded as reactionary and dangerous by many and was, on the whole, received with indignation and resentment in this country.

8. INTRODUCTION OF THE PROVINCIAL PART OF THE NEW CONSTITUTION

ASSURANCES CONTROVERSY

As the federal part of the Constitution was to be introduced some time after the provincial part had been in operation, the new constitution

was introduced in the provinces from 1st April 1937. The Indian National Congress decided to contest the elections to the new provincial legislatures and found itself returned in clear majorities in six out of eleven provinces. The responsibility of the formation of Ministries in these provinces had, therefore, to be shouldered by Congressmen who after great hesitation, and with the avowed object of *wrecking* the constitution, decided to accept offices provided the Governors of the provinces gave a solemn assurance that they would not in practice exercise the special powers given to them by the Act of 1935. In other words, they wanted to make use of their strength in the legislature in reducing the Governors' powers to a dead-letter and thereby removing the chief impediment in the way of the establishment of Responsible Government in the provinces. When, therefore, the Governors of these six provinces sent for the leaders of the Congress party in the legislature in each province, the leaders asked for the above mentioned assurances which the Governors declared they were unable to give in face of the express provisions of the Act of 1935.

INTERIM MINISTRIES

A constitutional deadlock thereupon resulted and the Governors were compelled to carry on the administration with the help of Ministers who did not command a majority in the legislature. The formation of such "interim ministries" at the very beginning of the constitution was widely ridiculed.

CONGRESS AC CEPTS OFFICE

In July 1937, the situation was changed by the assuring speeches of the Secretary of State for India and the Governor-General and

the Congress decided to form ministries in the six provinces of Bombay, Madras, United Provinces, Central Provinces and Berar, Bihar and Orissa where they had clear majorities. Sometimes later, the Congress in coalition with other parties was able to form ministries in the North-West Frontier Province and Assam also.

9. THE WORKING OF THE PROVINCIAL CONSTITUTION

GOVERNORS AS
CONSTITUTIONAL
HEADS.

After the initial difficulty described above was got over, the working of the provincial constitution was, everywhere, smooth beyond all expectations. The Assurances controversy had clarified the issues and the Governors acted tactfully and allowed the Ministers full scope for putting into operation their own programmes. There were incidents in the life of the United Provinces, Bihar, Orissa and Central Provinces Ministries which raised first class constitutional issues; a full account of these will be found in the Chapter on "Provincial Constitution at Work," but the manner in which they were tided over bore testimony to the spirit of good will prevailing on the both sides.

CONTROVERSY
REGARDING
FEDERATION

The comparative success of the provincial constitution raised the question of the introduction of an All-India Federation and it was only natural that those who had tasted power in the provinces should be the first to demand that the Central Government should be brought in line with the new conditions prevailing in the provinces. The attitude of the country to the scheme of the All-India Federation as pro-

posed by the Government of India Act, 1935 was definitely hostile, but while some favoured the securing of a few modifications, others wanted to drop it lock, stock and barrel'

AMENDMENT OF
THE GOVERNMENT
OF INDIA ACT

The beginning of the year 1939 saw the worsening of the political situation in Europe and this led to a clamour for a "fight" in order to secure full responsible government at the Centre. In the meantime, the possibility of India being involved in War drew the attention of the British Government to an omission in the Act of 1935 by which provision had been made for the Federal Legislature to make laws on provincial subjects in case of an emergency, but no authority had been given to the officers of the Federal Government to undertake the execution of such matters. This was corrected by the Amendment of the Government of India Act, which was introduced shortly before War broke out in September 1939

10 WAR AND INDIA'S CONSTITUTION

DEMAND FOR
DECLARATION OF
INDIA'S POLITICAL
GOAL

The War in Europe had immediate effect on political events in India. When Great Britain declared war against Germany, India too was officially declared at war with that country, without the consent of the people or of their representatives in the legislature. Though the sympathies of the Indian people were clearly with Great Britain in her struggle against the Nazi Rule in Germany, certain sections of the population saw in the predicament of Great Britain an opportunity for India. The Indian National Congress asked for a clear statement from the

British Government that at the end of the War, India would be given the right to frame her own Constitution (through a Constituent Assembly) which *may* amount to complete independence. The British Government, while giving a general assurance, dwelt on the complexity of the Indian problem and the Secretary of State for India referred in particular to the lack of unity among the different communities in India and the consequent inability of the British to divest themselves of their responsibility for the welfare and good government of the people of India.

FAILURE OF CONSTITUTIONAL MACHINERY

The Congress Ministries in the eight provinces thereupon resigned offices in November, 1939, thus leaving only Bengal, Sind and the Punjab governments to function as before. The Governor of Assam was able to form an alternative Ministry but the Governors of the remaining seven provinces were compelled to declare the failure of Constitutional machinery and to take over the entire control of administration in their own hands, as authorised by Section 93 of the Government of India Act, 1935. The legislatures were suspended, the Governors assuming to themselves all the legislative powers. A few senior Government officials were appointed in each province to act as Advisers to the Governor to assist him in carrying on the government.*

DECLARATION OF AUGUST, 1940

The suspension of the Constitution in the majority of the provinces, the continuance of an irresponsible government at

* Due to differences among the members of the Congress party in the Orissa Legislative Assembly, the Governor there found it possible to appoint an alternative ministry and therefore withdrew Section 93 and restored the normal working of the Provincial Constitution.

the Centre and the approaching danger of war to India's frontiers led to grave political discontent in the country. The major political parties concentrated their attention on the demand for the introduction of a National Government at the Centre, pending the final solution of India's constitutional problems to be achieved after the war. In August, 1940, an important declaration was made by the Viceroy, which was later confirmed by the Secretary of State for India. The goal of British policy in India was declared to be the establishment of Dominion Status in India as soon after the war as possible. The responsibility for framing the new constitution was, in accordance with the principle of self-determination, declared to rest primarily on the people of India subject to due fulfilment of obligations which Great Britain's long connections with India has imposed on her and for which His Majesty's Government cannot divest themselves of responsibility." This declaration was coupled with the offer of the expansion of the Governor General's Executive Council so as to make it representative of India's national interests.

ITS MAIN DRAWBACKS

The pronouncement evoked little enthusiasm in India for the following main reasons—*Firstly*, there was no prescribed time limit within which the grant of Dominion Status to India was to take effect. "As soon after the war as possible" might ordinarily have been regarded as reasonable but the Secretary of State referred to the distinction drawn by the Balfour Committee between the status of a Dominion and its *functions*, thereby suggesting that even when India received the *status* of a Dominion, it might not be allowed to exercise

control over certain functions like Defence. *Secondly*, while the principle of self-determination was conceded in the main it was hedged in by a proviso which was suspected to render the concession wholly unreal. The reference to "due fulfilment of obligations which Great Britain's long connection with India has imposed on her" could be interpreted to mean that His Majesty's Government would have a decisive voice in the name of safeguarding the interests of Minorities and Rulers of Native States. While the necessity of such solicitude for these interests was widely recognised in principle, it was feared that such an assurance might be relied upon by an obstructionist party or interest to secure the grant of unreasonable demands before agreeing to a new constitution. *Thirdly*, the failure of negotiations between the Viceroy and the important leaders of political parties on the issue of the expansion of the Executive Council created an impression that the British Government did not really propose to part with power and give such important portfolios as Defence to Indians. It must, however, be frankly recognised that the failure was due in the main to want of agreement among the different political and communal groups as to the proportion of members to which each of them should be entitled in the re-constructed Executive Council.*

INTERNAL DIFFERENCE IN INDIA—The failure to end the political stalemate led to the revival of extremism in Indian politics. The British Government, having tried its hand at settle-

* The constitutional dead lock to-day is not between a consentient Indian national movement asking for freedom and a British Government reluctant to surrender its authority but between the main elements of India's own national life." Paper on "India's Constitutional Future" by the Rt. Hon. L. S. Amery, Secretary of State for India, Asiatic Review, January, 1941.

ment and failed, declared its inability to do anything further and laid the blame at the door of communal differences in India. The Indian National Congress stressed its faith in complete independence and as a protest against the restriction of freedom of expression during war, started a movement of Individual Civil Disobedience. The Muslim League advocated the partition of India so that the areas in which the Muslims were in a numerical majority should be grouped together to form what is known as Pakistan. This idea was bitterly resented by all liberal elements as it would strike against the essential unity and integrity of the country.

EXPANSION OF THE GOVERNOR-GENERAL'S EXECUTIVE COUNCIL. In July 1941, the British Government, finding it impossible to induce the different communities in India to come to an agreement, announced the expansion of the Governor General's Executive Council by the appointment of Indians to the five new portfolios created to meet the increased pressure of work due to the war. The number of Members in the Council, including the Commander in Chief, was thus raised to twelve out of whom seven were Indians. The satisfaction created by this liberal gesture was, however, partial and short-lived as the world events were moving very fast.

BRITISH WAR CABINET PROPOSALS. The entry of Japan into the war in November 1941 constituted a menace to India's eastern frontiers and stressed the need for an increased war effort in India. The British War Cabinet in response to urgent and pressing entreaties from India, America and China agreed to reconsider the whole question of con-

stitutional settlement in India. The conclusions of the Cabinet were embodied in a document which was handed over to a member of the Cabinet, Sir Stafford Cripps, a renowned socialist and an acknowledged friend of India's political aspirations. Sir Stafford arrived in India by air on March 20, 1942 and revealed the proposals of the War Cabinet to a few high officials and leaders of different parties. The proposals were later published and efforts at settlement made but the negotiations ultimately broke down on the issue of transferring control over Defence to Indians and Sir Stafford had to return disappointed. The proposals of the British War Cabinet were automatically withdrawn, leaving the situation as it was before. The nature of the proposals, their constitutional significance and the causes of the breakdown of negotiations deserve to be carefully studied as they must form the basis of any future agreement.

The following is the full text of the proposals brought by Sir Stafford Cripps:—

TEXT OF THE PROPOSALS

His Majesty's Government having considered the anxieties expressed in this country and in India as to the fulfilment of promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realisation of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any aspect of its domestic and external affairs.

His Majesty's Government, therefore make the following declaration

(a) Immediately upon the cessation of hostilities steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new constitution for India.

(b) Provision shall be made, as set out below, for the participation of Indian States in the constitution making body

(c) His Majesty's Government undertakes to accept and implement forthwith the constitution so framed subject only to —

(I) The right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for the subsequent accession if it so decides

With such non acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down

(II) The signing of a treaty which shall be negotiated between His Majesty's Government and the constitution making body This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands it will make provision, in accordance with undertakings given by His Majesty's Government for the protection of racial and religious minorities, but will not impose any restriction on the power of the Indian Union to decide in future its relationship to

other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the constitution it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

(d) The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities:

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of provincial legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number about $1\frac{1}{10}$ th of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

(e) During the critical period which now faces India and until the new constitution can be framed, His Majesty's Government must inevitably bear the responsibility for, and retain the control and direction of the defence of India as part of their world war effort, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the people of India. His Majesty's Government desire and invite the immedi-

ate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India."

CONSTITUTIONAL IMPLICATIONS OF THE PROPOSAL A careful reading of the above text would show that the proposals could be divided into two main parts, one dealing with the constitutional goal of India and the other dealing with the arrangements for the duration of the war. With regard to the future, it was made quite clear that India would get full-fledged Dominion Status with even the right to secede from the British Empire. This unequivocal grant without any reservations or modifications satisfied even the most extremist demand as it amounted to complete independence. Further, this grant was to be made without loss of time. Immediately after the cessation of hostilities, a Constituent Assembly would be convened and any constitution settled by it would be binding upon the British Parliament which would proceed to embody the same in the form of a Treaty. The principle of self-determination was thus conceded. The Treaty would, however, contain certain stipulations for the safeguarding of the interests of minorities. If any province, after participating in the Constituent Assembly, found that the form of constitution finally agreed upon did not satisfy its aspirations or suit its interests, it would have the option to stay out and would be given the same status of a Dominion as would be granted to the Indian Union.

Similarly, the native states would have the option to join the Indian Union or remain aloof.

CRITICAL ESTIMATE OF THE PROPOSALS It must be admitted that the above proposals constitute a great advance on the previous declarations of His Majesty's Government and seek to place the relations between India and Britain on entirely equal and honourable terms. It contains, however, two main difficulties; *firstly*, it gives the provinces the right to secede from the Indian Union from the very start.

The exercise of such right would lead to the destruction of India's unity. The formation of a number of separate units or the division of India into two main parts would only intensify communal differences and make them politically dangerous. The financial consequences would be no less disastrous and the non-acceding Native States retaining direct contact with the Paramount Power would only add to the prevailing political chaos. As a solution of the problem of minorities it is a remedy worse than the disease.*

* The main ground on which the demand for partition is based is that the Hindus refuse to regard themselves as a minority and claim that the Hindus and Muslims form two different nations incapable of constituting a single state. The following main objections against this scheme may be noticed

1. If the very purpose of this plan is to solve the problem of minorities in India, it is difficult to see how that could be achieved since even after partition, there would be apart from other minorities large Hindu populations in Muslim States and large Muslim populations in Hindu States.

2. Wholesale migration of population which may conceivably solve the above difficulty would be impossible to carry out in view of the large size of the country, the agricultural character of the population, the difficulties of language and the prohibitive cost and inconvenience of transfer.

3. The existence side by side of Pakistan and Hindustan—two Communal States or blocks of States—would not be conducive to amicable relations between the two.

4. The position of other minorities would logically necessitate the creation of similar zones for them—a process which would only end in destroying completely the unity of India.

5. And lastly, is it certain that the Hindus and Muslims consti-

Secondly, the people of the native states would go without any real and effective representation in the deliberations of the Constituent Assembly which would include the nominees of the Rulers of the Native States. This would also materially detract from the democratic principle of election of representatives granted to the people of British Indian provinces

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THE REJECTION OF PROPOSALS The second part of the Proposals dealing with the present arrangements contemplated the transfer of all portfolios except that of Defence in the Governor-General's Council to Indians and an attempt was even made to give the certain matters connected with the Defence department to an Indian, leaving the conduct of war and questions of strategy to the Commander-in-Chief who would be directly responsible to the British War Cabinet. But on the central issue whether the re-constructed Council of the Governor-General, consisting of representatives of major political and communal parties in India, would be merely an expanded Council working within the frame-work of the present constitution or a National Cabinet with the Governor-General as a mere constitutional head, the negotiations broke down as Sir Stafford Cripps made it plain

tute two different nations? As it is difficult to define the term nation in rigid terms it is possible to lay emphasis on its different aspects and prove or disprove the two-nations theory. During the last few Centuries, the Hindus and Muslims in spite of their deep religious, social and cultural differences have been gradually drawn together by community of race language economic interests and political aspirations and it is open to the leaders of the two great communities to emphasise their differences and undo the work of unification and thereby permanently cripple the unity and constitutional stature of India or to carry forward this process and enable India to gain its full measure of equality among the different nations of the world

that no changes requiring the statutory modification of the present constitution could be effected for the duration of the war and that entrusting full power to such a National Cabinet not responsible to the Governor-General would only mean the establishment of the tyranny of the majority !

11. THE PRESENT POSITION

The administration in six provinces, Bombay, Madras, United Provinces, Central Provinces and Berar, Bihar, and N. W. Frontier Province is at the time of writing in the hands of the Governors, the Ministries having resigned and the legislatures having been suspended. The federal part of the Constitution seems nowhere near introduction and the present structure of the Central Government continues to be modelled mainly on the lines of the Government of India Act, 1919. The war situation in the world shows no signs of clearing up; if anything, it is thickening day by day. The British Government have definitely declared that India would get Dominion Status as soon after the war as possible. But the exact content of that very indefinite expression Dominion Status and the time and manner of its grant remain indeterminate.* The immediate political future of India hangs in the balance.

* For a somewhat detailed study of the concept and constitutional implications of Dominion Status see Appendix I.

CHAPTER II.

THE CENTRAL EXECUTIVE

THE PRESENT STRUCTURE OF THE CENTRAL GOVERNMENT Pending the inauguration of the All-India Federation as laid down in the Government of India Act, 1935, the present structure of the Government of India continues to be based on the provisions of the Government of India Act, 1919, with certain modifications. The Act of 1919 had vested the superintendence, direction and control of the civil and military government of India in the Governor General in Council who was required to pay due obedience to all such orders as he might receive from the Secretary of State for India.

1. THE GOVERNOR GENERAL

THE APPOINTMENT OF THE GOVERNOR-GENERAL. At the head of the present Central Executive is the Governor General, also known as Viceroy since 1858 and now combining the office of the Crown's Representative in relation to Indian Native States. He is appointed by His Majesty on the advice of the British Prime Minister, usually from among prominent public men of high rank and noble birth.* No rigid qualifications are laid down but an attempt is generally made to secure a man of out-

*The Governor-General of a Dominion is now appointed on the formal and exclusive recommendation of the Dominion Prime Minister who also signs the Commission in place of the Secretary of State as heretofore. Moreover nationals of the Dominions also are now appointed to the office. A. B. Rudra, The Viceroy and Governor General of India, p. 10.

standing ability with extensive parliamentary or administrative experience. He may not have detailed knowledge of Indian conditions but should have a fresh and vigorous mind and a liberal outlook. The Governor-General is the most highly paid official in the world and in his capacity as the Crown's Representative in relation to Indian States shares in regal dignities. No wonder, therefore, that the best people available in the Empire are often attracted to this "the most picturesque and distinguished office in the overseas service of the British Crown."* The appointment of the Governor-General is not for any fixed term but by convention it is continued for five years during which period he can, after the passing of the Leave of Absence Act, 1924, enjoy leave of absence from India only once and for a period not exceeding four months.

THE CHARACTER OF HIS OFFICE.

The Governor-General's office is not a party office in as much as changes in the British Ministry do not ordinarily affect his position. Acute personal differences between him and the Secretary of State may, however, bring about his resignation. The possibility of such an occurrence is remote as all political parties in England have more or less a similar outlook on Indian affairs, and changes in the strength of the political parties do not, therefore, materially affect British policy with respect to India. The Ministries in England may come and go but the Governor-General continues for his period of five years.

LEGAL AND POLITICAL IMMUNITIES.

The Governor-General of India enjoys two special immunities denied to the Governors-General of Dominions. Firstly, he is not liable to be sued in any court in

* Simon Commission Report, Vol. I, p 177.

India either in respect of his official or private acts. Even when he ceases to be the Governor-General, proceedings in respect of acts or omissions in the discharge of his official duties can be brought against him only with the sanction of His Majesty in Council. Secondly, "the Governor General is immune from criticism in the Indian Legislature. Standing Orders of both Chambers of the Indian Legislature as well as of the different Provincial Legislatures prohibit discussion of the conduct of the Governor General as distinct from the Governor General in Council. Conduct is interpreted not in the sense of private or moral conduct only, but includes the exercise by him of any of his personal powers, whether statutory, delegated or otherwise—powers exercisable in law by the Governor-General apart from his Executive Council"*

2. THE EXECUTIVE COUNCIL

ITS COMPOSITION

The Governor-General's Executive Council was first established by the Regulating Act of 1773. Since then it has undergone several changes in its composition, functions and powers. It consists of such number of members as His Majesty may decide. At present, there are eleven members excluding the Commander-in-Chief who is an extraordinary member. They are all appointed directly by the Crown, usually on the recommendation of the Governor-General. Three of the members must be persons who have been for at least ten years in the service of the Crown in India and one must be a Barrister of England or Ireland, an Advocate of Scotland or a Pleader of a High Court of India of not less

* A. B. Radra. Op. Cit. p. 21.

than ten years' standing. This gives the Council an official complexion, for the membership of the Council is regarded as a prize post to be aspired for by the ablest among the members of the Indian Civil Service. Though the qualifications prescribed do not exclude Indians from appointment, in practice no Indian was appointed till 1909. Since 1921, three of the members were Indians, though no such rule existed. This was done in pursuance of the declared policy of increasing association of Indians in every branch of the administration. The tenure of the members is not fixed but is usually five years and, like the Governor-General, they can enjoy leave of absence only once and for not more than four months.

PORTFOLIO SYSTEM

(Since the days of Lord Canning the members of the Executive Council work according to the Portfolio system by which each of them is in charge of one or more departments.) The distribution of work is done by the Governor-General who not only supervises and controls the general administration but is himself in charge of Foreign and Political department. The Commander-in-Chief controls Defence including the army, the navy and the air force; the Home-Member is in charge of All-India Services, Police, Prisons and certain judicial matters within the scope of the Central Government; the Law Member is the head of the Legislative department and looks after the drafting of new laws; the Finance Member controls all financial matters including the raising of revenues, preparation of the budget, banking, currency and exchange; the Member in charge of Communications looks after Railways, Roads, Posts, Telegraphs, Wireless, etc.; the Com-

merce Member controls India's trade and industry, there is a Member in charge of Education, Health and Lands. To these must be added the following separate departments each under the control of a Member created due to increased pressure of work in connection with the war—Supply, Civil Defence, Labour, Indians Overseas and Information.

METHOD OF WORK.

There is, thus, a clear cut distinction between the work of different departments and matters concerning each department are normally disposed of by the Member-in-Charge. [Each Member is to keep the Governor-General duly informed of all important matters in his department.] He is required to refer to the Governor-General all matters which, in his judgment are of major importance. While this leaves each member a certain measure of discretion, there are certain classes of matters which *must* be taken to the Governor-General for orders. They are—(1) All cases where there is a difference of opinion with some other Department, (2) All cases in which the decision of a Provincial Government is sought to be overruled, and (3) All cases which require reference to the Secretary of State.

SECRETARIES

Immediately below the Member-in-Charge of each department is a Secretary who is generally a senior member of the Indian Civil Service and is the administrative head of each department. He has the right to direct access to the Governor-General whom he sees about once a week. This practice is a relic of the old days when the Executive Councillors could not be trusted

with too much power. Even now it materially detracts from the prestige and influence exercised by the Executive Councillors who often find that their Secretaries have already prejudiced the mind of the Governor-General in particular cases. The Secretaries have also the right to attend meetings of the Executive Council in order to supply the Members such information as they may require.

MEETINGS OF
THE COUNCIL
AND ITS
DECISIONS.

To matters of general and vital importance relating to administrative policy, the Governor-General and his Council give collective thought.* The Governor-General decides the time and place of the meetings of the Council and prepares rules of procedure to be followed at such meetings. He is the *ex-officio* president of the Council and takes the chair at all its meetings and nominates a Vice-President who presides in the absence of the Governor-General. The decisions of the Council are usually arrived at after a full discussion and matters are rarely pressed to a division. But if that becomes necessary the Governor-General is normally bound by the decision of the majority of those present and if they are equally divided, he or the other person presiding, has a casting vote. The Governor-General, however, has the final power of over-riding a majority or even a unanimous decision of his Council if he is of opinion that that is essential for the safety, tranquillity or interests of British India or any part thereof. In such cases, the matter

*Cases in which the Governor-General differs from a department or in which there is difference of opinion between two or more departments or in which it is proposed to legislate or in which it is proposed to send a despatch to the Secretary of State are invariably decided in Council. In addition to these, the Governor-General may think fit to refer any cases to the Council.

may be reported to the Secretary of State for India if any two members of the over ridden majority so desire. This emergency power in the hands of the Governor-General is only in the nature of a reserve and its very existence prevents the formation of any stiff opposition to the Governor General or of any clique the like of which frustrated the designs of Warren Hastings, the first Governor-General. In fact it was the sad experience of that unfortunate Governor General that necessitated the grant of this power to the Governor-General in 1786.

3 THE RELATION OF THE GOVERNOR-GENERAL TO HIS EXECUTIVE COUNCIL.

SUBORDINATION OF THE EXECUTIVE COUNCILLORS TO THE GOVERNOR GENERAL.

In the Central Executive, the Governor-General's position is distinctly superior to that of his Councillors who are technically his colleagues in so far as they are appointed by the Crown, and further, in so far as their decisions are normally binding upon the Governor-General. In fact, they occupy a clearly subordinate position and this is due to several reasons the most important of which are indicated below.

REASONS.

Firstly, the Executive Councillors generally owe their appointment to the Council to the recommendation and influence of the Governor-General to whom, again, they look up for promotion to higher offices e.g. Governorships of provinces. *Secondly*, it is the Governor General who distributes work among the members and exercises general supervision over their departments, keeping himself duly informed both through the Members and their Secretaries. *Thirdly*, the decisions of the Council over which he

presides can, in the last resort, be over-ridden by him. Fourthly, the Executive Council is a heterogeneous group—consisting not of any single political party but of the Commander-in-Chief, three or four Civilians and the remaining non-official Indians of whom one is usually a Muhammadan. Since they represent no body and have no joint responsibility, they do not develop any team spirit and cannot, therefore, offer any effective and united opposition to the Governor-General. There is, instead, an atmosphere of respectful submission and obedience.

The recent expansion of the Executive Council providing for an over whelming majority of non-official Indians has no doubt introduced a democratic element in the Council; but, due to the essentially temporary character of the arrangements the admittedly non-representative capacity of the persons appointed, and the preoccupation of the members with the problems created by the war, it is difficult to judge the exact degree of influence exerted by the new members.

GOVERNOR-
GENERAL'S
UNIQUE
POSITION.

Moreover, the Governor-General occupies a unique position in the constitution. He is not merely the head of the Central Executive but has many other responsibilities and powers. As Viceroy or Representative of the Crown, he is clothed with regal authority and exercises all the powers of the Crown in relation to Native States. Certain powers of prerogative e.g. the power of pardon, the grant of commissions in Indian Defence Forces and the grant of Indian titles and honours have been delegated to him. As head of the Central Legis-

lature he wields vast legislative and financial powers which are discussed fully in the next Chapter. He has, besides, executive and legislative powers in relation to the provinces and controls their government. These powers are expressly vested in the Governor-General alone and not in the Governor-General in Council.

CONCLUSION Thus, a formidable combination of rights and responsibilities in the hands of the Governor-General makes him by far the most powerful authority in India, before whom the members of the Executive Council sink into insignificance. What Sir O'Moore Creagh said about this many years ago is still true. He is said to have remarked, 'the mental attitude of the Members of the Council to the Governor-General is one of obsequious respect, which causes them—with rare exceptions—to treat his slightest wish as Khatī Sheriff, to be disregarded at their peril'. Nevertheless as a purely advisory body the Executive Council is of valued assistance to the Governor-General. Its members provide him with the necessary knowledge of the country and its problems and thus enable him to appreciate the issues and maintain continuity of policy.

CHAPTER III.

THE CENTRAL LEGISLATURE

The present Central Legislature consists of the Governor-General and two Chambers, viz., the Legislative Assembly or the Lower house and the Council of State or the Upper house. The introduction of this bicameral form of the legislature dates from the Act of 1919; prior to that there was only one Chamber.

1. Composition of the Legislature

1. NUMBER OF SEATS

THE COUNCIL OF STATE. The Council of State consists of a maximum number of sixty members of whom thirty-four are elected and twenty-six nominated by the Governor-General. Of those nominated twenty are officials and the rest non-officials. There is thus a narrow and precarious elected majority.

THE LEGISLATIVE ASSEMBLY. The Legislative Assembly consists of a minimum of one hundred and forty members, at least five-sevenths of whom are to be elected and of the remaining at least one-third

are to be non-officials. The present strength of the Assembly is one hundred and forty-five of whom one hundred and five are elected, twenty six are nominated officials and fourteen are nominated non-officials. The Assembly is thus a larger house with a wider elected majority.

**NOMINATED
OFFICIALS AND
NON OFFICIALS**

The officials nominated to the two Chambers include all members of the Governor-General's Executive

Council, who are nominated members of one of the Chambers though they have a right to attend and address both. Besides, there are other high officials from the Central and the Provincial Governments. Among the nominated non-officials in the Assembly are the three sole representatives of the Depressed Classes, Indian Christians and Anglo-Indians, respectively.

2 DISTRIBUTION OF SEATS

**SEATS DISTRI-
BUTED AMONG
DIFFERENT
PROVINCES.**

The elected members are returned from the different provinces "in proportions which do not appear to

bear any close resemblance to the distribution of population or area, but on a basis which presumably reflects consideration of the importance of each province."

**DISTRIBUTION
AMONG COM-
MUNITIES**

The seats assigned to different provinces are further distributed among the different communities and interests, as shown in the following tables —

The Composition of the Council of State
(At the time when the Simon Commission Reported)

Province	Nominated		Elected					Total
	Officials	Non-Officials	Non-Mahomedan	Mahomedan	Sikh	Non-Communal	Minorities	
Government of India	11	—	—	—	—	—	—	11
Madras	1	1	4	1	—	—	—	7
Bombay	1	1	3	2	—	—	—	6
Bengal	1	1	3	2	—	—	1	8
United Provinces	1	1	3	2	—	—	—	7
Punjab	1	3	1	2	1	—	—	8
Bihar and Orissa	1	—	2	1	—	—	—	4
Central Provinces and Berar	—	2	—	—	—	1	—	3
Assam	—	—	—	1	—	—	—	1
Burma	—	—	—	—	—	1	1	2
N. W. Frontier Province	—	1	—	—	—	—	—	1
Total	17	10	16	11	1	2	3	60

The Composition of the Legislative Assembly
(At the time when the Simon Commission Reported)

Province	Nominated		Elected						Total
	Officials	Non-officials	Non-Mahomedan	Mahomedan	Sikh	Euro-pean	Land Holders	Indian Commerce	
Government of India	14	5	—	—	—	—	—	—	19
Madras	2	—	10	3	—	1	1	1	18
Bombay	2	1	7	4	—	2	1	2	19
Bengal	2	2	6	6	—	3	1	1	21
United Provinces	1	2	8	6	—	1	1	—	19
Punjab	1	2	3	6	2	—	1	—	15
Bihar and Orissa	1	1	8	3	—	—	1	—	14
Central Provinces and Berar	1	1	3	1	—	—	1	—	7
Assam	1	—	2	1	—	1	—	—	5
Burma	1	—	3	—	—	1	—	—	5
Delhi	—	—	1	—	—	—	—	—	1
Ajmer-Merwara	—	—	—	—	—	—	—	—	1
N. W. Frontier	—	1	—	—	—	—	—	—	1
Total	26	15	62	30	2	9	7	4	145

3. METHOD OF ELECTION

WHAT ARE COMMUNAL ELECTORATES? Seats are not only assigned on a communal basis so that each important community has a guaranteed number of representatives, but they are filled by the system of Communal electorates, i.e., by election at which only the voters belonging to that particular community are allowed to exercise their right of vote. This necessitates the division of the electorate into communal groups and the compilation of separate electoral rolls for each community. This system is to be distinguished from the practice prevailing in Western countries where religious or communal distinctions are regarded as simply irrelevant from the political point of view and are not, therefore, given any recognition in the mode of election; each locality or interest, irrespective of the different religious allegiance of its members, sends its representatives to the Legislature. It has further to be distinguished from the system of Joint or Mixed Electorate with Reservation of seats. In this system seats are reserved for different communities and so only members of those particular communities can contest those seats, but all voters, irrespective of the community to which they belong, may vote for candidates seeking election. The system of separate electorates adopted in India is, however, communal through and through.

4. FRANCHISE

COUNCIL OF STATE. There is no uniform franchise for the Council of State and the Legislative Assembly throughout India. It varies in the different provinces, the idea being to take into consideration the

prevailing local conditions In Bombay Province the following persons have the right to vote at elections to the Council of State —(i) Those who pay income tax on an annual income of not less than Rs 30,000, (ii) those who own land and pay land-revenue of not less than Rs 2,000 per year, (iii) those who are Sardars, Talukdars, Inamdars, etc., (iv) those who are or have been Presidents or Vice-Presidents of any Municipality or District Local Board, (v) those who are or have been members of the Senate or fellows of a University, (vi) those who are or have been members of any legislative body in India, and (vii) those who enjoy the literary titles of Mahamopadhyaya or Shams ul Ulema

CHARACTER OF
THE COUNCIL
OF STATE

Thus "the electorate for the Council of State has been so framed as to give the Upper House a character distinct from the Legislative Assembly, and indeed the franchise is extremely restricted. Property qualifications have been pitched so high as to secure the representation of wealthy landowners and merchants, previous experience in a Central or provincial legislature, service in the chair of a Municipal Council, membership of a University Senate and similar tests of personal standing and experience in affairs qualify for a vote"*. The Council of State is thus an oligarchical body composed entirely of conservative elements in the country. It can hardly claim to be a representative body considering that 32 members returned from British India which has a population of over 250 millions of people were elected by only 17,000 voters¹. No woman is entitled to sit in the Council of State or

* Simon Commission Report, Vol I p 153

to vote for election to it. It is, however, open to the Council of State to remove either of these barriers by passing a resolution.

THE LEGISLATIVE ASSEMBLY. In case of the Legislative Assembly the franchise is much wider. In Bombay, all those who pay income-tax, or land-revenue of not less than Rs. 75 per year (this amount is reduced to Rs. 37-8 in the case of districts like Ratnagiri and Panch Mahals and Upper Sind Frontier) have the right to vote. The total electorate in 1926 was about 1-1½ million voters who returned 105 members from British India and Burma.

5. TENURE

The tenure of the Council of State is five years while that of the Assembly is three years. The Governor-General can dissolve either house before the expiration of such period or can extend such period if in special circumstances he thinks fit.

6. CRITICISM OF THE COMPOSITION OF THE CENTRAL LEGISLATURE

SECOND CHAMBER. The Composition of the present Central Legislature has four prominent characteristics which deserve notice. It is, *firstly*, a bicameral legislature. The Act of 1919 gave to India for the first time a second Chamber. The intention of the Joint Authors of the Montford Report in setting up such a body was merely to secure expert revision of measures of legislation passed by the lower house, but the Parliamentary Committee which considered that Report over-ruled the idea and provided for a full-fledged second Chamber with powers co-equal with

those of the Assembly, except in matters of voting demands for grants and originating finance bills. It may be said that all important democratic countries usually have a Second Chamber which serves as a check upon hasty legislation, secures representation of certain interests and exercises a stabilising influence on the general tempo of political life. But in India where the Legislative Assembly has hardly any real power either in legislation or in finance and has no power to hold the Executive responsible to it, the creation of such a Chamber was superfluous. The Governor-General is armed with all powers of control over the Assembly, thereby eliminating any need of a check over its activities.

ITS CONSERVATIVE CHARACTER Secondly, the conservative character of the Council of State as seen from its large number of nominated members and high franchise, could not but exercise a reactionary influence on Indian political life. It has actually, on various occasions, passed laws for the Executive which the Assembly has refused, thereby diminishing what little control the Assembly might have exercised if it had been left alone.

NOMINATED MEMBERS Thirdly, the presence of nominated members, special officials, in both Chambers gives the Houses an atmosphere of unreality. These do not *represent* anybody except themselves and their government, the officials have necessarily to vote on every issue in accordance with the wishes of the government and even the nominated non-officials who owe their seats to the benevolence of the Executive dare not oppose the wishes of the government, other-

wise their future nomination is at stake. With a solid *bloc* of votes thus guaranteed to the Government, it requires Herculean efforts on the part of the elected members to join hands, and defeat the Government.

COMMUNAL ELECTORATES.

But perhaps the most unsatisfactory feature of the composition of the present Central as also Provincial Legislature is the adoption of Separate or Communal Electorates—"the provision by law that a particular religious community shall be represented in a popular legislature solely by members of its own body, with a guarantee as to how many communal seats there shall be."*

THEIR CONDEM- NATION.

The Montagu-Chelmsford Report which examined this question thoroughly came to the conclusion that Communal Electorates were opposed to the teaching of history, would stereotype existing relations between the different communities in India and would constitute a serious hindrance to the development of self-government. They said, "We conclude unhesitatingly that the history of self-government among the nations who developed it, and spread it through the world, is decisively against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself. . . . Division by creeds and classes means the creation of political camps organized against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to

* Simon Commission Report Vol II. p. 66.

national representation is ever to occur The British Government is often accused of dividing men in order to govern them But if it unnecessarily divides them at the very moment when it professes to start them on the road to governing themselves it will find it difficult to meet the charge of being hypocritical or short-sighted There is another important point A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security, it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority"* (*Italics mine*)

REASONS FOR THEIR ADOPTION

It is difficult to conceive of a greater indictment couched in quite appropriate language The Simon Commission also expressed themselves in full agreement with this view and yet both the Montford and the Simon Commission Reports recommended Separate Electorates' The only reason advanced for their adoption was that the Muhammadans regarded these as "settled facts" and any attempt to go back upon them would "rouse a storm of protest and put a severe strain on the loyalty of a community which has behaved with conspicuous loyalty in a period of very great difficulty" The Muhammadan claim is based on the fear that in a system of joint electorates, the member who will be returned may well turn out to be a Moslem who is more concerned to keep the favour of the non-Muslim majority of voters than to represent Muhammadan interests It is not appreciated that a similar influence will be exercised on Hindu candidates also, with the

result that only the moderate elements on both sides will stand to gain.

CONCLUSION. The most serious defect of Communal Electorates is that they not only perpetuate but definitely intensify communal disunity, and the longer the time for which they are allowed to last, the greater is the communal bitterness they produce. They accentuate the severity of the problem which they profess to solve, and it is already becoming clear that the strengthening of communal feelings in India may prove an insurmountable obstacle in the way of India's progress towards the attainment of nationhood.

II. Procedure in the Legislature

1. SUMMONS, PROROGATION AND DISSOLUTION

The two Chambers of the legislature are *summoned* by the Governor-General to meet at such time and place as he may determine. He has power to *prorogue* any Chamber, thereby bringing that particular session of the Chamber to a close so that the members cannot meet again unless summoned afresh. The Governor-General may also *dissolve* either Chamber and such dissolution necessitates fresh elections for the formation of that Chamber. Thus a dissolution brings the *existence* of the house to a close while a prorogation brings the *session* to an end.

2. OFFICERS OF CHAMBERS

APPOINTMENT. The President of the Council of State is appointed by the Governor-General and was till recently an official ; at present he is a non-official. The President of the Legislative Assembly is a member of the Assembly elected by that body

and approved by the Governor-General The Assembly also elects a Deputy-President who presides in the absence of the President, a panel of four Chairmen is nominated by the President and any of them may be required to take the Chair when the President and the Deputy-President are both absent

FUNCTIONS

The position of the President of the Assembly corresponds to that of the Speaker of the House of Commons He presides over the meetings of the Assembly, maintains order and conducts the business of the House in a dignified manner He prevents intemperate speeches and the use of unparliamentary language, gives rulings in case of doubtful points of procedure and protects the privileges of the members He may direct any member whose conduct is in his opinion grossly disorderly to withdraw from the House or in the event of disorder arising in the House, he may suspend any sitting of the Chamber He can also adjourn the House He admits questions, gives permission to move adjournments and in case of an equality of votes on any issue before the House, he has a casting vote It is an established practice that the President gives his casting vote in favour of the maintenance of *status quo* He is expected to be above party politics in order to discharge his duties in an impartial and dignified way

**SALARIES AND
REMOVAL**

The salaries of the President and the Deputy-President of the Assembly are voted by the Assembly on whose vote of no-confidence they can be removed from office, with the assent of the Governor-General

3. OATH

If the legislature is meeting for the first time, each member must, before taking his seat in either Chamber, subscribe to an oath of allegiance or make a solemn affirmation of loyalty to His Majesty the King Emperor of India and his heirs and successors.

4. QUORUM

No Chamber can function unless there is a quorum i.e., a minimum number of members present as required by the rules. This number is twenty-five in the case of the Assembly and fifteen in the case of the Council of State.

5. PRIVILEGES OF MEMBERS

FREEDOM OF SPEECH. Subject to the rules and standing orders made for the conduct of business and the procedure to be followed by either Chamber, every member has *freedom of speech* in the legislature. No person is liable to any proceedings in any court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings of either Chamber. The grant of this privilege is due to the necessity of allowing members to participate fully and frankly, without any fear of legal consequences, in the debates of the legislature.

FREEDOM FROM ARREST. Legislators also enjoy freedom from arrest under a civil process during the continuance of the meeting of the Chamber or a Committee of the Legislature of which they are members, and during fourteen days before and after such meetings.

ALLOWANCES Members of the Legislature do not get any fixed salary but they receive certain travelling and halting allowances for attending meetings of the Legislature.

6 DISQUALIFICATIONS

No person can be a member of both Chambers. If an elected member of one Chamber becomes a member of the other Chamber, his seat in the first Chamber becomes vacant. If any person is elected a member of both Chambers, he shall before taking his seat in either Chamber, state in writing the Chamber of which he desires to be a member, and thereupon his seat in the other Chamber becomes vacant. Every member of the Executive Council of the Governor-General is nominated as a member of *one* Chamber but has the right of attending and addressing both. No official is qualified for *election* as a member of either Chamber and if any non-official member of either Chamber accepts office in the service of the Crown in India, his seat becomes vacant.

7. GOVERNOR-GENERAL'S RIGHT TO ADDRESS EITHER CHAMBER

The Governor-General has the right to address either House of the Legislature and may for that purpose require the attendance of its members.

III. Functions and Powers of the Legislature.

The functions and powers of the Central Legislature could be classified under three main heads—Legislation, Finance and Relation to the Executive.

A. Legislative Powers.

1. SCOPE OF LEGISLATION

SCOPE UNDER THE ACT OF 1919 The Central Legislature had, under the Government of India Act, 1919, power to make laws for the whole of British India in all matters except those which were classified as Provincial. Even in these, the Central Legislature was theoretically competent to legislate provided the Governor-General's previous sanction was obtained.

CHANGE SINCE APRIL 1937. The position is now changed as the introduction of the provincial part of the new constitution has meant the transfer to the provinces of powers to legislate on all subjects contained in the Provincial Legislative List and the Concurrent Legislative List, subject to the provisions of the Government of India Act, 1935. This change is a logical sequel to the proposal to transform a unitary state into a federal one.

2. PREVIOUS SANCTION OF THE GOVERNOR-GENERAL

UNDER THE ACT OF 1919. A member of the legislature was required to obtain the previous sanction of the Governor-General for introducing any measure affecting:—

(a) the public debt or public revenues of India or imposing any charge on the revenues of India;

(b) the religion or religious rites and usages of any class of British subjects in India;

(c) the discipline or maintenance of any part of His Majesty's Military, Naval or Air Forces;

(d) the relations of the Government with foreign princes or States; or any measure:—

- (i) regulating any provincial subject or any part of a provincial subject,
- (ii) repealing or amending any Act of a local legislature,
- (iii) repealing or amending any Act or Ordinance made by the Governor General

CHANGE SINCE APRIL 1937 With the introduction of some of the provisions of the new constitution, this has been changed and the matters as respects which previous sanction of the Governor General is now required are as follows —Bills or amendments affecting

- (i) any Act of Parliament extending to British India,
- (ii) any Governor-General's or Governor's Act or Ordinance issued by them in their discretion,
- (iii) any matter in which the Governor General is required to act in his discretion,
- (iv) any Act relating to any Police force,
- (v) the procedure for criminal proceedings in which European British subjects are concerned,
- (vi) the grant of relief from any federal tax or income in respect of income taxed or taxable in the United Kingdom, or

subjecting

- (vii) persons not resident in British India or Companies not wholly working in British India to greater taxation than persons resident in and companies working in British India.

3. LEGISLATIVE PROCEDURE

BROAD PRINCIPLE. A Bill becomes an Act if it passes through both the Chambers and receives the assent of the Governor-General. A Bill is not deemed to have been passed by both the Chambers unless it has been agreed to by both the Houses either without amendment or with such amendment as may be agreed to by both the Houses.

INTRODUCTION. Except a Finance Bill which can be introduced only in the Legislative Assembly, a Bill may originate in either Chamber after due notice required by the rules has been given. If the Bill concerns any matter in respect of which the previous sanction of the Governor-General is necessary, the same should be secured before the Bill is introduced. Ordinarily, a Bill may be introduced by any member of either House but any proposal to increase taxation or involving expenditure cannot be made except on the recommendation of the Governor-General. A member introducing a Bill must secure the leave of the Chamber. In doing so he may briefly explain the object of the Bill and allow an opposing member to reply. If the House then decides by a majority to grant the necessary leave, the Bill is introduced.

PUBLICATION IN THE GAZETTE. After a Bill is introduced it is published in the Government of India Gazette, though it is open to the Governor-General to order the publication in the Gazette of a Bill which may not have been formally introduced.

THREE READINGS. When a Bill is formally introduced and published, the mover of the Bill proposes that the Bill be read for the first time.

At the *first reading* only a general discussion regarding the principle of the Bill is entered into, in that Chamber, the sense of the House is then taken and if the majority vote for it, the Bill is said to have passed the first reading. At that stage, the House has three alternatives before it, it may either proceed with the *second reading* of the Bill or, if the Bill is controversial it may be circulated to elicit public opinion or, a Select Committee of the House or a Joint Select Committee of both the Houses may be appointed to make recommendations before the second reading is proceeded with. At the second reading, the Bill is discussed and voted upon clause by clause, any amendments moved may also be considered and either carried or rejected. It is this reading which is really crucial for a Bill. When all the clauses have been dealt with, the Bill is read for the third time. The *third reading* is a formal affair, no discussions take place and no substantial amendments can be moved, though changes of a grammatical or verbal nature are allowed. If the Bill passes the third reading, it is said to have been passed by that House and then goes to the other House where it has to undergo the same three stages.

CONFLICT
BETWEEN
THE TWO
CHAMBERS

If a Bill passes through both the houses it is to be presented to the Governor General for his assent, but a difficult situation may arise if a Bill passed by one House is not agreed to by another or, if the other House insists on any amendment which the first House is not prepared to accept. There are three provisions in the law to solve such dead-locks. In the first place in order to *prevent* the arising of such dead-

locks, a *Joint Select Committee* of both the Houses may be appointed to examine a Bill before it reaches the stage of second reading in the originating Chamber. This is done if both the Houses pass formal resolutions to that effect. Such a Committee provides an opportunity for an exchange of views at an early stage so as to forestall differences and expedite the passage of the Bill by reducing the chances of a deadlock. But when a deadlock has arisen, the Governor-General may do one of the following. He may call a *Joint Conference* consisting of an equal number of representatives of each Chamber but this body cannot take any decision; its discussions are expected to influence the proceedings of the two Houses. Or, he may call a *Joint Sitting* of both Chambers where all members of the two Houses assemble and the President of the Council of State presides. The decision of the Joint Sitting by a majority will be deemed to be the decision of both the Chambers. If the Bill is rejected, the matter ends. But if it is passed, it is to be presented in that form to the Governor-General for his assent.

4. GOVERNOR-GENERAL'S LEGISLATIVE POWERS

CHECKING LEGISLATION.

When a Bill passed by both the Chambers of the legislature is presented to the Governor-General, he may either give his assent in which case the Bill becomes an Act, or refuse it in which case the Bill does not become law. Such power of refusal of assent is referred to as the power of *veto*. He may also return the Bill for reconsideration by either Chamber or reserve it for the signification of His Majesty's pleasure. An Act of

the Central Legislature assented to by the Governor-General may be disallowed by His Majesty

CERTIFICATION The Governor-General can also secure the enactment of a Bill whose introduction or passage is refused by the Indian legislature, by *certifying* that the Bill is essential for the safety, tranquillity or interests of British India or any part thereof. Such a measure has no effect until it is laid before both Houses of Parliament and has subsequently received His Majesty's assent, but where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that the Act he has certified shall come into operation forthwith. It thereupon does so, subject to disallowance by His Majesty in Council.

ORDINANCES The Governor-General can also issue Ordinances without reference to the legislature. Such ordinances are legally as binding as Acts of the Legislature but they can remain in force only for six months unless renewed for a similar period. In all such cases the responsibility of the Governor-General is not to the Central Legislature but to the Secretary of State and the British Parliament.

STOPPING DISCUSSIONS. The Governor-General has also the general power of stopping any discussion on any measure in the legislature if he considers it necessary for the peace and tranquillity of British India or any part thereof.

CONCLUSION. The omnipotence of the Governor-General in matters legislative stands out in sharp contrast with the impotence of the Legislature. His previous sanction, refusal to assent to a Bill, power of certification, right of issuing ordinances, and the power of stopping discussions reduce the legislature to a mock Parliament.

B. Financial Powers.

The financial powers of the Central Legislature concern the raising of revenues and the control over expenditure.

1. RAISING OF REVENUES

All proposals for the raising of revenues are embodied in Finance Bills which must originate in the Assembly and are usually moved by the Finance Member of the Governor-General's Executive Council. The procedure for the passage of these Bills is similar to that of other Bills, and when a Finance Bill is passed by both Houses it is presented to the Governor-General for his assent. In case the Bill is rejected by one or both Chambers, the Governor-General can exercise his power of *certification*. In practice, this power has not been regarded as a reserve power but its use has become a normal feature of the present regime with the result that the legislature has no real power over the raising of revenues.

2. CONTROL OVER EXPENDITURE

DISCUSSION AND VOTING ON DEMANDS FOR GRANTS	An annual financial statement showing the estimated revenues and expenditure of the Government of India; popularly known as the Budget, is presented
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every year to both the Chambers. It is open to both Houses to discuss the Budget but only the Legislative Assembly has the privilege of voting on the demands for grants made for each department, because it is a recognised practice in all democratic constitutions to give the right of voting on the demands for grants only to the lower House which by its composition is more representative of the people.

**VOTABLE AND
NON VOTABLE
EXPENDITURE**

Not all expenditure, however, is so votable by the Assembly. The following items which between themselves cover over eighty per cent of the total expenditure are declared *non votable*. The Governor-General can authorise the discussions of those grants but no votes are taken on them. The non-votable items are —

- (i) interest and sinking fund charges on loans,
- (ii) expenditure of which the amount is prescribed by or under any law,
- (iii) Salaries and Pensions of officers appointed by the Secretary of State or the Governor-General in Council or by any Provincial Government before 1st April 1924, and Chief Commissioners and Judicial Commissioners,
- (iv) sums payable to persons in the Civil Services in lieu of some appeals,
- (v) Expenditure on defence, political and ecclesiastical services

THE POWERS OF
THE ASSEMBLY.

The rest of the expenditure is declared *votable* and each grant must

be put separately to the Assembly which has the power to refuse or reduce a grant, though it cannot increase it. Members are at liberty to refuse the whole demand for grant for a particular department or to move a *cut-motion*, proposing to reduce the grant by a particular amount. They may also move a *token-cut*—a nominal cut of say Re. 1/- or Rs. 100/- merely to get an opportunity to expose and censure a department without intending to affect its grant materially. The Governor-General has, however, the power to *restore* any grant in its entirety in spite of its having been refused or reduced by the Assembly. This power of restoration vested in the Governor-General renders the whole discussion unreal and irresponsible; for, it is already known that whatever the Assembly may decide, the Governor-General is always there to restore all the grants required by the Government. The members of the Assembly find in this only an opportunity for the display of their art of speaking, and indulge in all sorts of jibe and sarcasm. The Executive has all along shown a studied disregard of the wishes of the Assembly; hence, an important power—"the power of purse"—is denied to the Indian Legislature.

3. COMMITTEES OF THE LEGISLATIVE ASSEMBLY

STANDING
FINANCE
COMMITTEE.

In order to give an opportunity to the House to exercise supervision over the finances of the Government, a *Standing Finance Committee* consisting of members elected by the Assembly and a *Chairman* nominated by the Gov-

ernor General is appointed every year Its functions are —

- (i) to examine proposals of new votable expenditure
- (ii) to allot amounts out of lump sum grants assigned to various departments,
- (iii) to suggest retrenchment and economy in Government expenditure, and
- (iv) to offer general criticism of the Finance Department

COMMITTEE ON PUBLIC ACCOUNTS A *Committee on Public Accounts* is also appointed every year to examine the audit and appropriation of accounts of the Central Government. The function of this Committee is to satisfy itself that the expenditure actually incurred by the Government in the previous year is in accordance with the grants sanctioned by the Assembly Any irregularities in the procedure of expenditure must be brought to the notice of the Assembly The Committee consists of not more than twelve members out of whom two-thirds are elected by the non official members of the Assembly The Finance Member of the Governor General's Council acts as the Chairman and has a casting vote

THEIR INFLUENCE.

While the Standing Finance Committee has a voice before expenditure is decided upon, the Committee on Public Accounts examines the regularity of expenditure which has been already incurred None of these committees has, however, given any real power to the Assembly in matters of finance

C. The Relation of the Executive to the Legislature

The relation of the present Central Executive to the Central Legislature is based on the following proposition laid down by the Joint Authors of the Montagu-Chelmsford Report:—

THE GOVERNING PRINCIPLE

"The Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the changes now to be introduced in the provinces. In the meantime, the Indian Legislative Council should be enlarged and made more representative and its opportunities of influencing Government increased." (Italics mine).

CRITICISM OF THE EXECUTIVE.

In pursuance of this policy the Act of 1919 continued the 'already existing form of an Executive in no way responsible to the Legislature which, however, was allowed to exercise certain powers of criticism of the policy and actions of the Executive and to draw its attention to cases of administrative negligence or mismanagement in any of the following ways:—

1. INTERPELLATIONS

ADMISSION OF QUESTIONS.

Members of both the Chambers have the right to ask questions relating to the conduct of administration from the members of the Government by giving ten days' notice. In special cases short-notice questions are also allowed. No question can be asked if it relates to any matter affecting the relation of His Majesty's Government or of the Government of India with any foreign State or of the

Government of India with any foreign State or with any Prince or Chief under the suzerainty of His Majesty, or to any matter which is *subjudice* The President has the final power to decide whether a question is or is not within the above restrictions

SUPPLEMEN- TARY QUESTIONS

When a question is admitted, the member of the Executive Council to whose department it relates, or his Secretary, answers the question and it is open to any member, subject to disallowance by the President, to put any *supplementary questions* Usually, the first one hour before the commencement of business on any working day is reserved for the asking of questions.

THEIR CONSTITUTION- AL SIGNIFIC- ANCE

The purpose of these interpellations is two fold - Firstly, it gives an opportunity to the members to get the information they require in a quick, direct and authoritative manner. But more important than that is that it enables the legislators to draw public attention to cases of corruption and injustice in the administration and thereby to expose the working of Government departments. This naturally keeps the Executive on its guard and makes them exercise vigilance to put down cases of gross mismanagement.

2 RESOLUTIONS

ADMISSION OF RESOLUTIONS

A member of either Chamber may, by giving fifteen days' notice, move a Resolution. No Resolution can be moved on subjects in regard to which questions cannot be asked. If admitted, the Resolution is thrown open to discussion, amendments to a Resolution may be moved with the permission of the President.

THEIR CONSTI-
TUTIONAL SIG-
NIFICANCE.

The passage of the Resolution has, however, no binding effect on the Executive. Its constitutional signi-

ficance is, therefore, nil. Its only result is to draw the attention of the Government to a matter of public importance and to enable the legislature to give definite expression to its views thereby guiding and reflecting public opinion. It is only in the nature of a recommendation to the Executive which being irresponsible and fixed may attach such importance to it as it finds convenient. In countries where the Executive is responsible to the Legislature, an adverse Resolution carried against the will of the Executive would amount to a vote of censure against the government which would feel called upon to tender its resignation; this is not possible in India where the Executive remains responsible to Parliament.

3. MOTIONS FOR ADJOURNMENT

ADMISSIONS OF
MOTIONS FOR
ADJOURNMENT.

Every member of either Chamber has the right to move a Motion for

Adjournment of the House to which he belongs. Such a Motion can be admitted only if it relates to a definite matter of *urgent public importance*. The right to move such a Motion is subject to the following restrictions :

(i) Not more than one such Motion can be moved at the same sitting.

(ii) Not more than one matter can be discussed on the same Motion and it must be restricted to a specific matter of recent occurrence.

(iii) It must not revive discussion on a matter already discussed in the same session.

(iv) It must not deal with a matter on which a Resolution could not be moved

Permission to move such a Motion should be asked on any working day after the question hour is over and before the commencement of other business of the House. If leave to introduce such Motion is granted by a requisite number of members, which is fixed at thirty, the Motion is taken up for discussion at 4 p.m., i.e., two hours before the House would normally adjourn for the day. If the discussion on the Motion is not finished before the normal closing time, the Motion is said to have been 'talked out', otherwise, votes are taken and if the Motion is carried the House adjourns without transacting any further business, if it is lost, the House resumes its normal work.

THEIR CONSTITUTIONAL SIGNIFICANCE

The purpose of moving Motions for Adjournment is the same as that of moving Resolutions except that in giving notice of an Adjournment Motion the House can create an opportunity for discussing any "definite matter of urgent public importance" and influencing the policy of the Executive in handling that particular problem or situation while the matter is yet fresh. It throws the Executive on the defensive and makes it sensitive to public feeling. Motions for Adjournment, like Resolutions, if carried against the Government in democratic countries would amount to a declaration of no confidence by the Legislature, but in India the Executive being irremovable is unaffected by any such Motions.

D. Conclusion.

IRRESPONSIBILITY OF THE EXECUTIVE.

The Central Executive, represented by the Governor-General in Council, is in no way *responsible* to the Central Legis-

lature. While the legislature has been enlarged and given an elected majority with an elected President to guide its deliberations and while it has been given certain limited powers with regard to passing laws, discussing the Budget, voting on certain demands for grants, asking questions and moving Resolutions and Motions for adjournment, all these do not amount to anything more than giving an opportunity to the peoples' representatives to criticise the actions of the Executive, leaving the latter entirely free to attach such importance to that criticism as it may deem necessary. The essential unreality of these powers of the legislature can be grasped by realising that all possible powers—ordinary and extraordinary—in matters of administration, legislation and finance are ultimately vested in the Governor-General.

— The following admirable summary of the Governor-General's powers is taken from the Report of the Simon Commission :

**SUMMARY OF
GOVERNOR-
GENERAL'S
POWERS**

'Normally carrying out his functions with the guidance and concurrence of the Members of the Executive Council, and subject to the

very critical observation of a popularly-elected Legislature representing about 250 millions of people, he can, in cases of emergency and stress, completely over-ride that Council and disregard the most fully considered expression of opinion of that Legislature.

"Thus if in any matter his judgment is that the safety, tranquillity and interests of British India, or any part thereof, are essentially affected, he may reject the advice of his Council, and thereupon the

decision of the Government of India, whether for action or inaction, is the decision of the Viceroy himself. The rules for the transaction of Council business, the allocation of portfolios among its members, and the limitation of their scope, are entirely subject to his final decision. Similarly in the case of the Indian Legislature, the Governor-General can dissolve either Chamber or if in special circumstances he thinks fit, can extend its life. He can insist on the passing of legislation rejected by either or both Chambers by certifying that such passage is "essential for the safety, tranquillity or interests of British India or any part thereof." And while he may, with the assent of his Council, restore grants refused by the Assembly, he can on his sole initiative authorise such expenditure as he thinks to be necessary for the safety or tranquillity of British India or any part thereof. He may withhold his assent to any Bill, central or provincial or reserve such Bill for His Majesty's pleasure. He has in addition, powers in an emergency, without consulting the Legislature, to legislate by ordinance having effect for not more than six months.

"The previous sanction of the Governor-General is required for the introduction of certain classes of Bills both in the central and provincial legislatures. It is for him to decide what items of central expenditure fall within the non votable categories. On him too falls the duty of nominating a number of officials and non official members to the Central Legislature.

"These are the principal legal powers residing in the Governor-General, but no mere list of powers can convey the full importance of his office or the

range of ~~his~~ individual authority. *The course of Indian politics is profoundly affected by his personality and influence.*"* (Italics mine).

THE IMPORTANCE OF THE LEGISLATURE

The Governor-General and the Members of his Council are responsible to the Secretary of State and the British Parliament. Their appointment, tenure of office, salaries and allowances, conditions of service, etc., are all determined by His Majesty in Council. Their proposals are ultimately carried either by the vote of the House if the latter is willing, or, by the exercise of special powers vested in the Governor-General. Powers of Veto, Certification, Restoration, and Disallowance have been so freely used that they have come to be regarded as a part of daily routine. This has created an atmosphere of unreality in the legislature whose members know beforehand that whatever the decision of the House, the Government could secure everything by asking the Governor-General to exercise his special powers.

THE EXTENT OF ITS INFLUENCE

The Simon Commission expressed the view that "sufficient attention has not been given to the very real influence exercised by the Central Legislature over the activities of the Central Executive in all fields of administration and legislation" and that "the indirect influence of the Assembly on the Government has been of still greater importance." It is difficult to appreciate the truth of these remarks considering that the influence of the Legislature on the Executive in all major questions has been insignificant and that there have been repeated failures on the part of Government

* Simon Commission Report Vol. I pp 177-8

to accept even minor suggestions of the House when the mind of the Government was already made up. No wonder, therefore, that the opposition in the Assembly has lacked responsibility and taste in its criticism of almost any and every proposal brought before the Government sometimes for no better reason than this that it has emanated from the Government.

CONCLUSION

Even the introduction of the new constitution in the provinces brought no material change in the attitude of the Central Government to the legislature. Considered from any point of view, and specially after the introduction of Provincial Autonomy, the arrangement at the Centre seemed to be anomalous. The Executive represented nobody and, though completely irresponsible, was armed with full powers in matters of legislation and finance reducing the Legislature to a mere mockery. It was not only not responsible to the legislature but was scarcely even responsive. As a measure of protest, the Congress party in the Legislative Assembly being the biggest party and constituting the Opposition, decided to absent themselves from the sittings of the Legislative Assembly.

This has deprived the Legislative Assembly of its representative and popular character with the result that even the recent expansion of the Governor-General's Council with a majority of non-official Indians in it has not introduced any material improvement in the situation.

CHAPTER IV.

THE ALL-INDIA FEDERATION

1. THE BASIC PRINCIPLES OF FEDERALISM

DIFFICULTY OF DEFINING A FEDERATION. It is extremely difficult to give a cut and dried definition of a Federation, which would suit all the different types of Federal States established in the past or existing at present. There is no "pure" type of a Federation from which the principles of federalism may be deduced. 'Federalism, in some form or other, has its roots in the remote past, for it was not unknown among the city states of Ancient Greece. We find it again in the Middle Ages among some of the cities of Italy, and, indeed, since the thirteenth century its history has been continuous in the development of the Swiss Confederation which was born when the three Forest Cantons banded themselves together for protection in 1291.'* And yet it is since the establishment in 1787 of the United States of America that the idea of a Federation has gained popularity in modern times. Countries like Canada, Australia and South Africa have taken it up to make it the basis of their political organisation. Each of them, however, has adapted the federal idea to its own peculiar conditions. No two federations are, therefore, exactly alike.

* C. F. Strong. *Modern Political Constitutions*, p. 98.

FEDERATION
DEFINED

Bearing the above difficulties in mind, a Federation may be defined as

a type of State usually formed by independent or autonomous units agreeing to transfer certain definite powers to a Central Authority in order to promote certain common ends* This can best be understood by contrasting a Federal with a Unitary State

CONCENTRATION
OF AUTHORITY IN
A UNITARY STATE

In a Unitary State, the best examples of which are the United Kingdom, France and Italy, legislative, administrative and financial authority are all concentrated in the hands of the Central Government and the Governments of the different provinces or States included within its boundaries have no independent powers of their own. They derive all their authority by virtue of delegation or devolution of power made by the Central Government. Hence, their position is that of agents to whom powers are delegated, or handed over, by a superior who is at liberty to increase or diminish the scope of such powers. Thus, the distribution of any powers in practice between the Central and the Provincial Governments is not based on any law but is merely the result of administrative convenience and rests entirely on the sweet will of the Central Government which is legally all-powerful. The subordination of the Provincial Governments to the Central Government is, in theory, so complete that the former may even be abolished by the latter

* This does not apply to federations (e.g. of Canada and Australia) within the British Empire as the status of the federating units was inferior to that of the mother country

CO-ORDINATE AUTHORITY IN A FEDERATION.

On the other hand, a federation is formed by the coming together of *independent** states desirous of evolving a common or Central Government to which they *agree* to hand over certain *definite* powers, carefully reserving others to themselves. This naturally makes for a rigid distribution of powers between the Central Authority set up and the Governments of the federating units or provinces. Both parties derive their respective powers from an agreed constitution and hence no authority is superior or subordinate to the other. Both are co-ordinate. The scope of authority of each is well-defined and each is, therefore, supreme within its own sphere. There is a clear cut distinction between federal and provincial subjects and no province can interfere in federal matters just as the Federation cannot interfere in provincial matters.

THE DISTINGUISH- ING FEATURE OF FEDERATION

Thus, while a Unitary State symbolises the *complete absorption* of different provinces into a single state with an all-powerful Central Government, a Federal State or a Federation is a political contrivance whereby different provinces or states are *integrated* into a whole without losing their own identity or individuality and with their authority over certain matters inviolate and intact. *This definite allocation or rigid distribution of powers may be regarded as the determining feature of federation.* It is the peculiar characteristic which distinguishes a Federal from a Unitary State.

* This does not apply to federations (e.g. of Canada and Australia) within the British Empire as the status of the federating units was inferior to that of the mother country.

SUPREMACY OF
A WRITTEN AND
RIGID CONSTI-
TUTION.

The second characteristic of a Federation follows from the first.

A rigid distribution of powers can

be made only by accepting the *Supremacy of the Constitution* which embodies the terms of the Federation. In setting up a Federal State it is necessary to draw up a document laying down the details of the allocation of authority and the acceptance of the supremacy of this document is the *sine qua non* of a Federation. In a Unitary State where all authority is ultimately derived from the Central Government, there need not be any such document. The federal constitution must, of necessity be *written and rigid*. It must be written because only then is it possible to express with precision and accuracy the kind of allocation of powers that is contemplated. Vague impressions of intentions, not put down in black and white, are apt to give rise to endless troubles and misunderstandings. It should be rigid because neither the Federal nor the Provincial Governments should be at liberty to tamper with the constitution. It should not be capable of being easily altered for the authority that can modify the constitution, either directly or indirectly, will soon become supreme and the basic principle of definite allocation of powers may be violated. The Federal Constitution is in the nature of a Charter of rights and duties of the parties to the federation and must, therefore, remain supreme. The method of its alteration should be such that only when all or most of the parties to the federation are agreed, should a change be made possible.

ESTABLISHMENT
OF AN INDEPENDENT COURT

Thirdly, every Federation requires the *establishment of "Supreme" or "Federal" Court*, an impartial judicial tribunal of the highest capacity and independence to act as the "interpreter and guardian of the constitution." Since the constitution of a federal state is contained in an elaborate document setting forth the distribution of powers, cases of doubtful interpretation would often arise. The increasing complexity of the problems of modern governments makes such chances all the greater, however careful and exact may have been the language of those who drafted the constitution. Legal inventiveness and argumentative ability would soon raise a crop of issues regarding the exact meaning of the provisions of the constitution. "In a system of co-ordinate and independent political bodies, like the federal polity, conflict of authority is inevitable, because human ingenuity has not yet devised a scheme of powers that would make all conflict impossible, either at the inception of the constitution or in its future development, and because, even if such a perfect scheme were available, still mutual intrusion, either inadvertent, or deliberate, into each other's spheres of activity, is bound to take place."* Under such circumstances the establishment of a disinterested body, independent both of the Central and Provincial Governments becomes imperatively necessary for the preservation of the equilibrium of the constitution. It can declare *ultra vires* acts of any government, which exceed the powers given by the constitution. The need for such a Court does not exist in a Unitary

* B. P. Adarkar, *The Principles and Problems of Federal Finance*, p. 24.

State for in that case there is no room for conflict. The Central Government being the highest authority can, in the event of a dispute, resume powers handed over to the provinces. In a Federation, the two have co ordinate powers and if one of them is given the power to interpret the constitution, it would be asking one of the parties to the dispute to be also the judge, thereby violating the elementary principles of justice

CHIEF CHARACTERISTICS OF A FEDERATION

To sum up, a *Federation necessitates a rigid distribution of powers, the acceptance of the supremacy of a written and rigid constitution and the establishment of a Federal Court.* Of these, the first characteristic is the most important and the second and third are necessary only for the preservation of the first.

2 FEDERAL VERSUS UNITARY STATE

THE CHOICE BETWEEN A FEDERAL AND A UNITARY STATE

The Unitary and Federal are two different forms which may be assumed by States. It would, however, be a mistake to regard the Federal State as inherently superior or inferior to the Unitary State. Each is suited to a different set of circumstances and the question 'Which form is better?' must be decided by each country in the light of its peculiar conditions. A broad principle has, however, been laid down by Prof. A. V. Dicey according to whom the federal form of government is suited to those countries where there is a strong desire for *union* but no desire for *unity*. Thus, a peculiar feeling must be present whereby the people of the different units are anxious to come together under one state and yet do not want to part

with their local identity. There should be the desire for *union*, the desire of coming together for without it a single State need not be formed; but there should not be the desire for *unity* for, in that case, the suitable form of government would be a Unitary State. Federalism is a middle way between complete unity visible in a Unitary State and complete separation seen in independent States. It is essentially a principle of compromise. It is a "political contrivance intended to reconcile national unity and power with the maintenance of State rights." It is an appropriate form of the State where due to common ties, racial, religious, linguistic or cultural, and due to similar problems of defence, foreign affairs, etc., there is a desire to form a single State and to hand over to it certain matters of common interest, and yet due to differences in local conditions and habits, there is no desire to surrender all authority irrevocably to the Centre.

3. IS FEDERALISM SUITED TO INDIA?

The proposal of an All-India Federation raises the basic question whether the principle of Federalism is suited to conditions prevailing in India. India is at present divided in two main parts—British India consisting of a number of Governors' or Chief Commissioners' Provinces and the Native States, about six hundred in number, directly subject to the "Paramountcy" of the Crown.

CENTRALISATION OF AUTHORITY IN INDIA.

Since the passing of the Regulating Act of 1773, the tendency towards the evolution of a strong central government in British India was a dominant note of our constitutional development and administrative

growth This tendency had to be relaxed towards the latter part of the nineteenth century by taking measures of legislative, administrative and financial devolution Nevertheless, the Government of this country all along remained essentially unitary, the devolution of powers to the provinces being merely in the nature of delegation or administrative division

ITS BENEFITS

The benefits of this centralised and unified control over the different parts of India have been undoubtedly great. Political subjection to a common government has led to the recognition of a sense of unity and national solidarity which, more than anything else, has quickened the political consciousness of the mass of the people It could hardly be a point of dispute that the unitary form of government has been a great blessing to this country It has laid the foundations of a united India It has controlled 'the disruptive forces-generated by religious, racial and linguistic divisions, it has fostered the first beginnings, at least of a sense of nationality, transcending those divisions'*

CASE FOR FEDERATION OF BRITISH INDIAN PROVINCES

There are, however, two reasons why the establishment of a federal, instead of a unitary, type of State for *British India* may be considered

One is that due to diversity of linguistic and cultural conditions prevailing in the different corners of the sub-Continent of India, it may not always be desirable to have uniformity of laws and administration What may be good for one part of the country may not necessarily be desirable from the point of view of another Hence a substantial measure of local inde-

pendence in certain matters is necessary. Secondly, since it is the declared policy of His Majesty's Government to establish self-governing institutions in India, the first steps whereof are to be taken in the provinces, it follows that the matters falling within the sphere of Provincial administration should be clearly marked out from Central subjects. There could be no "Responsible" Government in the provinces if the Provincial Government itself is not immune from interference or control from above. Thus, on both these grounds it would be more appropriate to model the constitution of British India on Federal lines.

CONCLUSION. But as against the arguments given above, there is the danger that provincial and local differences may be accentuated and parochial jealousies and fissiparous tendencies may assert themselves and thereby undo the work of national integrity. The need in India is one of subordinating local and narrow loyalties to the larger feeling of a common nationality and it would, therefore, appear to be a retrograde step to change from the Unitary to the Federal type. Moreover, the provinces could be given greater power to deal with local matters by carrying forward the process of devolution—in administration, legislation and finance—without laying down a rigid distribution of powers as is implicit in a Federation. The ideal of a Federation of British Indian Provinces would, therefore, appear to be of doubtful value. A Unitary State is a more appropriate form of organisation for them.

The question of Federation in India derives its importance from the fact that a common political

organisation for British Indian Provinces and the Native States is considered desirable. If it were merely a case of British Indian provinces the Unitary form of the State would undoubtedly be better than the federal type, but the question of evolving a single polity for the administration of certain common problems to British India and the Native States raises political and constitutional difficulties which cannot be overcome without adopting the principle of Federalism. The two requisites of Federalism are —(1) the desire for union, and (2) the absence of desire for unity.

THE DESIRE FOR UNION

The desire for Union is apparent from the fact that the two parts of

India—one 'British' and the other 'Native'—are really very closely related. Community of race, religion, language, culture, history, and general outlook is unmistakable. Geographical contiguity, similarity of economic problems, common interest in services like Railways, Posts, Telegraphs, etc., and above all, the need for Common Defence and Foreign Policy are all uniting forces which make the desire for Union imperative. If the present artificial political division has not produced difficulties it is due to our common subjection to the British Government who carry on the administration of these matters through officers responsible to them. "A perceptible process of infiltration has been going on. We have helped the States in times of famine, we have lent them officers trained in British India to revise or supervise their revenue or financial administration, or to improve their agriculture and irrigation. Many of them have adopted our Civil and Criminal codes. Some have imitated,

and even further extended our educational system. Co-operation in matters of police and justice has been developed. Our railway and telegraph systems have been carried through and serve many of the States. The Indian customs tariff is a matter of concern to all States, including those which have ports of their own."* This has further brought the two parts together and their new consciousness of a common nationality has in recent years led to a greater and more pronounced wish for the establishment of a common government. "The impossibility of continuing to look at one half of India to the exclusion of the other"† is thus apparent.

Moreover, the inclusion of the Native States in an All-India Organisation is also based on another ground which has not been sufficiently appreciated in this country; and that is that if Responsible Government is ever to materialise at the Centre, it can only be when the States too have a share in the control of the Central government. Matters like defence, external policy, trade and tariffs, currency and banking, railways, posts and telegraphs vitally affect the States as well as the Provinces and it is inconceivable that the representatives of the Provinces alone should at any time be given complete control over such affairs. It is futile to ignore the hard realities of the situation. The introduction of Responsible Government at the Centre can be fairly made only when an All-India Polity is established.

THE LACK OF
DESIRE FOR
UNITY.

The desire for unity, however, is lacking. The over-riding consideration in this is the Sovereignty of the Princes

* Montagu-Chelmsford Report, p. 191.

† Simon Commission Report, Vol. II. p. 2.

and Native Rulers in their respective States. The British Government, at present, guarantee the Rulers a certain amount of liberty, subject to certain minimum safeguards regarding defence, external affairs and the maintenance of peace, to rule over their subjects in any manner they deem fit. This "personal government" of the States would be incompatible with a Unitary State which is legally competent to interfere in all internal matters of the units. So long as the Princes are not willing to forego their powers relating to the administration of the State, there could be no possibility of a Unitary State being established for India as a whole, "for it is only in a federal constitution that units differing so widely in constitution as the provinces and the States can be brought together while retaining internal autonomy."* The only type of State in which the Native States can at present be expected to join British India is one in which they have autonomy in certain defined matters of internal administration and the only way to guarantee that is to accept an All-India Federation. The case for a Federation is, therefore, a logical sequel to our anxiety to build up an All-India Polity.

CONCLUSION.

It is regarded by many as a proposition of doubtful value that the ideal of a Unitary State which is admirably suited to conditions prevailing in British India should be surrendered in order to accommodate the Native States whose present political organisation is still feudal or mediaeval in character and who may, therefore, put back the clock of political progress by exercising a reactionary influence on Indian politics. But, there

* Simon Commission Report, Vol. II. p. 13.

are greater chances for the States to feel the effect of the comparatively progressive system of Government and administration existing in the provinces than *vice versa*, and in any case, the dream of a United India cannot be easily given up. If the national aspirations for a united political organisation for all India are ever to materialise in the near future, the federal idea must play the central role in the next stage of our constitutional development. It is hardly desirable that India should remain permanently cut up into a number of provinces on the one hand and a collection of big and small Native States on the other, when their cultural unity and identity of needs and problems points towards the necessity of establishing a common Government at the centre. And since the next stage of India's political emancipation and constitutional growth would necessarily mean the transfer of power to the people and their representatives, the question of establishing an All-India Federation becomes inevitable.

A DISTINCTION It is, however, a separate question whether the particular scheme of Federation laid down in the Government of India Act, 1935, is suited to India. As the question of its adoption with or without modifications is a matter of the highest importance to the country, its detailed analysis and critical estimate are attempted in this and the following chapters.

4. THE FEDERAL UNITS

DISPARATE UNITS

The All-India Federation is to consist of eleven Governor's provinces, six Chief Commissioner's provinces and of such Native

States as agree to accede to the Federation. Thus, while the British Indian provinces are required to join the Federation compulsorily, the Native States are given option in the matter. The Federal units, as would become apparent from a glance at the map, would be of varying size, population and importance, and since the present boundaries of the provinces have not been fixed with due regard to cultural or economic unity, the federal units are in themselves of heterogeneous character. But a more remarkable feature would be the combination of semi-democratic provinces and the despotically governed Native States. While the constitution of the provinces is discussed fully in later chapters* the constitutional position of the Native States and their administrative organisation may be briefly indicated here.

3 THE INDIAN NATIVE STATES

THEIR VARIETY The Indian Native States represent those territories which are ruled by Indian Princes or Chiefs. They cover an area of 712 508 sq. miles with about one fourth of the total population of India. There are in all 562 principalities of which 235 are called States while the remaining are known by various names as Estates, Jagirs, etc. They are of varying size, population and importance. On the one hand, we have such large States like Hyderabad, Decan, Kashmir, Mysore, Travancore, Cochin and Baroda, some of which are as big as any of the Governor's provinces while on the other, we have petty estates extending over a few acres only†. The majority of the States, however, occupy an intermediate position.

* See Chapters VIII, IX and X.

† No less than 236 such States are situated in Gujarat and Kathiawar.

THEIR SUBJECTION TO THE CROWN. As distinct from British India, the Indian States do not form part of

the Dominions of His Majesty; they are not, therefore, British territory and their subjects are not British subjects. Nor are the States subject to the legislative authority of the British Parliament. The relationship existing between the Indian States and the British Government is primarily, and in the eye of law entirely, a relationship between the States and the British Crown. The States are held subject to the "Paramountcy" of the Crown. "But the Crown in England is a Constitutional Institution, as the Sovereign for the time being functions in regard to political matters only upon the advice of his ministers. The agency through which the Crown may exercise its functions with regard to the Indian States may be the Secretary of State or the Viceroy or any other duly constituted authority."*

**WHAT IS
PARAMOUNTCY?**

The relations between the Paramount Power and the Native States are not, however, easy to define. There is, in the first place, a lack of uniformity in this respect due to the existence of Treaties with a number of individual States the grant of Sanads † and usage or agreement. Secondly, "the relationship of the Paramount Power with the States is not merely a contractual relationship"‡ the Crown also claims a sort of "residual jurisdiction" the exact content or scope of which cannot be defined. The Indian States Committee appointed in 1927 examined the question of the exact constitu-

* Ramaswamy, *The Law of the Indian Constitution*, p. 81.

† These are acknowledgments of authority or privilege, generally coupled with conditions proceeding from the Paramount Power.

‡ Report of the Indian States Committee, 1929.

tional position of the Native States but could not offer any definite conclusion. On the contrary, they propounded the famous aphorism "Paramountcy is paramount" which certainly is not very enlightening. Hence, the exact status of the Native States has given rise to constitutional controversies.

ARE THE STATES SOVEREIGN?

While some have claimed that they are "sovereign" states subject in their relations with the British to rules of International Law, others regard them as entirely subordinate to the British and distinguished from British India only on grounds of expediency and historical accident. The latter view appears to be more tenable as it is in conformity with facts. If by a 'sovereign' state we mean a State which is not in any way subordinate to another State or Power and is thus wholly or completely independent, the Native States are obviously not sovereign for in the regulation of their external affairs, they are entirely in the hands of the Crown. They cannot negotiate with foreign powers and have no authority to declare war or conclude peace. They cannot cede, sell, exchange or part with their territories to other States without the approval of the paramount power, nor without that approval can they settle inter-statal disputes".* But even if we distinguish as Sir Henry Maine † has done between Independence and sovereignty and disregard the Austrian concept of sovereignty being indivisible, it is difficult to regard the States as "sovereign". For, even in matters of internal administration, the States are not free from intervention by the Paramount Power. It

* Report of the Indian States Committee 1929 p. 27

† Ramaswamy Op. Cit. p. 73

is true that in the large majority of the States, the administration is normally carried on in accordance with the wishes of the Rulers. Many of them exercise almost sovereign powers. "These States enact their own laws. They exercise plenary civil and criminal jurisdiction over persons and things in their territories. The decisions of the highest tribunals of the State are final; and no appeals lie against their decision to any Court beyond their territories. They impose taxes to finance their administrations. The maritime States impose customs on specified classes of goods entering and leaving their ports. Fifteen of the Indian States maintain their own postal systems. About twenty States mint coins."* But in no state is this "internal sovereignty" complete. "The British Government has in virtue of its position as paramount power claimed and exercised the right to settle successions, constitute regencies, to make arrangements for the education and training of minor ruling Princes, to intervene in case of gross misrule, even to depose Ruling Princes in extreme cases and to settle various disputes that may arise as between the State inter se or as between the States and the British Indian provinces or the Central Government."* The position of the States in this respect has been repeatedly made clear beyond all doubt, so that it is idle to regard the States as supreme even in their internal administration.†

* Ramaswamy, *Op. Cit.* p. 78

† The British Government exercise also extra-territorial jurisdiction in the States with regard to Cantonments, Civil Stations, Railway belts premises occupied by Residents or Political Agents and also over European subjects with respect to offences committed by them in any Indian State territory.

THEIR INTERNAL
SYSTEM OF
GOVERNMENT

Subject to the control exercised by the Paramount Power, the system of internal government of the

States is determined entirely by the respective Rulers who generally carry on the administration on the lines of their predecessors. The present position in the different States varies considerably, there is, on the one hand "personal government" of a pure and simple type prevailing in the large majority of the States, while some have introduced representative institutions for purposes of legislation and exercising a share of control over the Executive. In some States, the Rulers have themselves taken the initiative in the introduction of constitutional reforms, in others, the example of constitutional development in British India has inspired agitation for the grant of responsible government. Though several States have attained high standards of administrative efficiency and in certain spheres e.g. education, industries and social reform, a few of them have stolen a march over British India, altogether the States are yet far behind in the matter of constitutional progress in general and of independence of judiciary and the guarantee of civil liberties in particular.

THE CHAMBER
OF PRINCES

The Chamber of Princes is a representative body of the Rulers of the

Indian States and was first established by Royal Proclamation in 1921. Its inauguration marks a departure from the earlier British policy of discouraging joint action and joint consultation between the Indian States. The main idea behind the institution of this body is to secure the expression of the collective opinion of the Princes and to provide opportunities

for counsel and consultation in matters of common concern to India as a whole. The Chamber consists of 140 members of whom 108 are representatives of States who have right of individual admission and the remaining 12 are elected by 127 minor States by a system of group voting. The Chamber elects its own Chancellor and Pro-Chancellor and has a Standing Committee of seven members. The Viceroy acts as the Ex-officio President of the Chamber.

The Chamber meets once a year and discusses questions affecting Indian States. It is, however, a purely "deliberative, consultative and advisory, but not an executive body."* Its resolutions, if any, are purely recommendatory. It is expressly forbidden by its constitution from discussing "Treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, their States and the members of their families and the action of individual Rulers." Its establishment also leaves unimpaired the individual relations between any Indian State and the Crown. It is thus a body of very limited constitutional significance though and is important mainly for providing a regular opportunity for exchange of views among the Princes themselves and between the Princes and the Paramount Power.

6. THE INAUGURATION OF FEDERATION

THE PROCESS OF INAUGURATION The inauguration of the All-India Federation is to be made by the issue of a Proclamation by His Majesty. Such a Proclamation will be issued if an address in that behalf is presented to His Majesty by

* Simon Commission Report, Vol. I, p. 20.

the two houses of Parliament and, further, if the following condition is satisfied, namely, that the Rulers of Native States representing not less than half of the aggregate population of the States and entitled to choose not less than 52 members of the Council of State, the Federal Upper Chamber, have acceded to the Federation. Native States desirous of joining the Federation must signify their assent by executing an Instrument of Accession—a document laying down the conditions under which the State is willing to join the Federation and specifying the subjects with respect to which the State is willing to allow the Federal Government to interfere in the States. If the Instrument of Accession is accepted by His Majesty, the State becomes a member of the Federation and the Instrument becomes irrevocably binding on the Ruler, his heirs and successors.* The scope of federal intervention in the State agreed to in the Instrument cannot afterwards be curtailed though it could, with the approval of His Majesty, be extended. Such accession when completed is permanent and does not carry any right to secede.

RESTRICTIONS ON ENTRY

No time-limit has been prescribed for the inauguration of the Federation, but once the Federation comes into being the request of a Ruler that his State may be admitted to the Federation shall have to be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor General shall not transmit to His Majesty any such request unless an address

* Though the States have been plainly denied the right to secede the matter is not free from legal doubt. For a full discussion of this question, see Dr. Bholi Chandra's paper in the Indian Journal of Political Science July 1940.

is presented to him by both houses of the Federal Legislature praying for the admission of such State.

7. DISTRIBUTION OF POWERS

ENUMERATION AND RESIDUUM. There have been two main ways in which a rigid distribution of powers has been effected in the different federal states of the world. One is to hand over control over certain matters specifically defined and set out in a list to the Federal Government, leaving all "residuary" powers i.e., powers not included in the list, to the provinces. Another is to assign control over certain subjects mentioned in a list to the Provincial Governments and allow the Federation to exercise powers not mentioned in the list. In either case, the method is that of "Enumeration and Residuum," the difference resting on residuary or reserve powers being vested either in the Provincial or in the Central Government. Where, as in the formation of the United States of America, the idea is to preserve the local identity of the States and transfer only certain limited powers to the Federal Government, the residuary powers are left with the provinces. But where, as in the case of Canada, the idea is to strengthen the Central Government rather than guard the independence of the units, residual powers are vested in the Federal Government.

In the plan of the All-India Federation as laid down in the Government of India Act, 1935, a method quite different from the two discussed above has been adopted. Moreover, the distribution of powers as between the Federation and the provinces differs from the distribution of powers between the Federation and the Native States. The two have, therefore, to be studied separately.

(a) DISTRIBUTION OF POWERS BETWEEN THE
FEDERATION AND THE PROVINCES

THE FEDERAL LEGISLATIVE LIST The distribution of powers between the Federation and the provinces is contained in three Legislative Lists, the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List. The Federal Legislative List contains matters of All-India importance—e.g., defence including naval, military and air forces, external affairs, currency, banking and insurance, foreign trade, maritime shipping and railways, posts, telegraphs, telephones, wireless and broadcasting. On these matters the Federation has the exclusive power to pass laws and exercise administrative control.

THE PROVINCIAL LEGISLATIVE LIST The Provincial Legislative List contains matters of local importance—e.g., law and order, courts, prisons and police, public health and sanitation, agriculture, land revenue, industries, forests and fisheries, education and local self-government, internal trade, roads and public works. On these subjects *normally* only the Provincial authorities are competent to legislate or exercise administrative control.

FEDERAL INTERFERENCE IN PROVINCIAL MATTERS Thus, each authority has its own sphere of powers clearly marked out and neither of them would be permitted to trespass on that of the other. The Federation has, however, the right to intervene in matters included in the Provincial Legislative List under two *special* circumstances. One of them is when it appears desirable to legislatures of two or more provinces that certain matters included in the Provincial Legislative

List should be regulated by Act of the Federal Legislature and they pass resolutions to that effect. The other is when the Governor-General in his discretion declares by Proclamation that a grave emergency exists whereby the security of India is threatened by war or internal disturbance. He can, then, authorise the Federal Legislature to pass laws on Provincial matters and the recent Amendment of the Government of India Act, 1935 carried in 1939, authorises the officials of the Federal Government to exercise administrative control over provincial matters in case of war. This constitutes a very serious encroachment on provincial authority.

THE CONCURRENT LEGISLATIVE LIST

The Concurrent Legislative List contains matters like Laws of Crimes, Criminal Procedure, Civil Procedure, Wills, Succession, Marriage and Divorce, Transfer of Property, Trusts, Contracts, Labour Welfare, Factories, Inland Shipping and Navigation, etc., on which uniformity throughout the country may be desirable and yet local circumstances may permit of certain variations. In these subjects, both the Federal and the Provincial Legislatures are competent to pass laws. In order, however, to avoid conflicting legislation, it has been provided that whenever a provincial law conflicts with a federal law, the latter prevails and the provincial law becomes null and void to the extent to which it is repugnant to the federal law. But, if such a conflicting provincial law having been reserved for the consideration of the Governor-General or His Majesty has obtained the assent of the Governor-General or His Majesty, it will prevail over the federal law in that particular province.

RESIDUARY
POWERS

Though all possible care has been taken to distribute every conceivable power among either of the three lists, it is possible that some new powers not foreseen by the framers of the Act may assume importance in future. Such residuary powers have been handed over neither to the provinces nor to the Federation, but have instead, been left to the Governor General who may, *in his discretion*, empower either the Federal Legislature or the Provincial Legislatures to exercise those powers. This is a unique provision not found in the constitution of any other Federation and is bound to increase the power and status of the Governor-General.

CONCLUSION

The above discussion would appear to show that but for the two special circumstances under which the Federal Legislature can legislate on provincial matters, and for the Concurrent Legislative List both of which make the line of division less marked than it is in other Federations, there is a fair amount of rigidity in the distribution of legislative powers.

ADMINISTRATIVE CENTRALISATION

It is, however, noteworthy that the same degree of rigidity has not been maintained in administrative powers. Ordinarily, the executive authority of the Federation extends to matters with respect to which the Federal Legislature is competent to pass laws and the Provincial Executive authority extends to all matters with respect to which the Provincial Legislature has power to make laws, but in the following important cases, the Provincial Governments will be administratively subordinate to the Federal Government.

1. The Governor-General exercises control over the Governor in all matters in which the latter is required to act in his discretion or to exercise his individual judgment.

2. The Governor-General may direct the Governor of a province to discharge as his agent functions relating to defence, external affairs, ecclesiastical affairs and tribal areas.

3. The Governor-General in his discretion may issue orders to the Governor of a province as to the manner in which the executive authority of a province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.

**ADMINISTRATIVE CONTROL
IN TIMES OF
EMERGENCY.**

If we add to these the recent power conferred in 1939 by an Amendment of the Government of India Act, by which Federal Officers can interfere in provincial matters in case of war or other emergency, the administrative sub-ordination of the provinces to the Federal Government can hardly be a matter of doubt. The doctrine of "rigid distribution of powers," which is the basic principle of federalism is only imperfectly recognised in the division of powers between the Federation and the provinces.

**(b) DISTRIBUTION OF POWERS BETWEEN THE
FEDERATION AND THE FEDERATED STATES**

**DISTRIBUTION
AS AGREED IN
THE INSTRUMENT
OF
ACCESSION**

The division of powers as between the Federation and the Native States is to be made in accordance with provisions of the Instrument of Accession signed by each State. A State desiring to

accede to the Federation must execute an Instrument of Accession in which it is to set out the list of subjects which it is willing to hand over to federal control. Thus, there will not be only no uniformity as to the scope of federal intervention between the provinces on the one hand and the States on the other, but since each State is technically at liberty to set out such subjects as it likes, there may be no uniformity even among the States themselves. A law passed by the Federal Legislature may be applicable to some States and not to others. This is bound to create anomalies which could be avoided only by ensuring a uniform surrender of powers before the Instruments of Accession are accepted by His Majesty.

ITS RIGIDITY

This division of powers is, however, rigid inasmuch as no State can curtail the powers transferred to federal control but the scope of federal intervention can, if the State so desires, be extended. Since this depends entirely on the will of the States, it does not materially affect the rigid distribution of powers.

9. SUPREMACY OF THE CONSTITUTION

A RIGID CONSTITUTION

The supremacy of a written and rigid constitution is recognised in the All-India Federation in so far as the organisation of the Federation is governed by the provisions of the Government of India Act, 1935, which emanates from the British Parliament and cannot, therefore, be amended or altered by any legislative or popular body in India. The only body legally competent to make alterations in the Indian Constitution is the British Parliament. Thus, the constitution is, from the point

of view of the parties to the Federation, absolutely rigid.

NO SELF-DETERMINATION.

It may, however, be remarked that the rigidity of the constitution from the Indian point of view is so complete that it has evoked great resentment in India. A Federation in other cases is formed by the voluntary act of certain units and the constitution is accordingly the result of joint agreement among themselves; the constitution also lays down the machinery of a special character by which amendments may be subsequently made, care being taken to make it sufficiently difficult for great changes to be effected without general approval. The right to frame the constitution and to amend it thus inheres in the people of the Federation. India is a country whose constitution is decided upon by a political superior which alone is competent to alter it.

9. THE FEDERAL COURT.

INTERPRETER AND GUARDIAN OF THE CONSTITUTION

The third requisite of a Federation, namely, an impartial judicial tribunal, is found in the Federal Court provided by the Government of India Act, 1935 and established in 1937. It is empowered to interpret the constitution and settle disputes of a legal character arising between any two or more of the following parties, namely, the Federation, the Provinces and the federated Native States. A full description of its composition, functions and relation to other Courts already established in India is given in the Chapter on "Administration of Justice."

CHAPTER V

THE FEDERAL EXECUTIVE

THE SCOPE OF FEDERAL AUTHORITY

The Executive authority of the Federation generally extends to all matters in British Indian provinces and Federated States with respect to which the Federal Legislature has power to make laws for those Provinces or States. It further extends to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces belonging to the Indian establishment and to the exercise of authority vested in His Majesty in relation to the tribal areas.

1 THE GOVERNOR-GENERAL AND THE CROWN REPRESENTATIVE

A DISTINCTION This authority is to be exercised on behalf of His Majesty by the Governor-General either directly or through officers subordinate to him. A distinction is drawn, for the first time, between the office of the Governor General who is to be the head of the Federal Government and that of His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States. This distinction is necessitated by the proposal to establish an All-India Federation for "even after the Federation (of British Indian provinces and the Native States) comes into being, the use of Royal Prerogative and

Paramount Authority in relations with the Indian States will not be discontinued. Hence the need by law to emphasise the distinction between the two offices."²

2. THE GOVERNOR-GENERAL

APPOINTMENT. The Governor-General of India is to be appointed by His Majesty, presumably on the advice of the British Prime Minister, usually for a period of five years. His Majesty's Representative is to be similarly appointed and it is lawful for His Majesty to appoint one person to fill both these offices. In fact, for a long time, the two offices, though legally distinct, will continue to be held by the same person as otherwise the smooth working of the administration would be hampered. Though the Governor-General will be in supreme command of the Defence forces in India, provision is made for the appointment by His Majesty of a Commander-in-Chief of His Majesty's Forces in India.

SALARY AND ALLOWANCES

The annual salary payable to the Governor-General is fixed by the Act of 1935 at Rs. 250,800 and is charged to the revenues of the Federation, i.e. is not subject to the vote of the Federal Legislature which is even prohibited from discussing the same. Besides, the Governor-General is entitled to such allowances for expenses in respect of equipment and travelling upon appointment as may be fixed by His Majesty in Council.

MODE OF EXERCISE OF AUTHORITY.

The Governor-General is to exercise his executive authority in two sharply distinguished ways. In some matters he is required to *act in his discretion, i.e.,*

² K. T. Shah, *Federal Structure*, p. 125.

without consultation with his Ministers who have no constitutional right to tender advice to him on those matters in all other matters he is to *act on the advice of his Council* of Ministers except in cases where he is required to *exercise his individual judgment* i.e., in such cases he is to consult the Ministers but is not necessarily bound by their advice

3. THE GOVERNOR-GENERAL ACTING IN HIS DISCRETION

RESERVED DEPARTMENTS

The functions of the Governor General in respect of four departments—

Defence, External Affairs (except the relations between the Federation and any part of His Majesty's Dominions), Ecclesiastical Affairs and Tribal Areas—and in respect of a number of other matters mentioned in the different sections of the Government of India Act 1935 shall be exercised by him in his discretion. This sphere of administration may, therefore be entirely closed to ministerial influence

COUNSELLORS

In order to assist him in the exercise of these functions the Governor General may appoint *Counsellors* not exceeding three in number, whose salaries and conditions of service shall be prescribed by His Majesty in Council. They are to be *ex officio* members of both Chambers of the Federal Legislature, without power to vote. The functions of these Counsellors will be purely advisory and their advice will not in any way be binding upon the Governor General who will be responsible only to the Secretary of State and through him to the British Parliament.

4. THE COUNCIL OF MINISTERS

APPOINTMENT
AND SALARIES.

In order to aid and advise the Governor-General on all matters except those in which he has to act in his discretion, the Governor-General is to have a Council of Ministers not exceeding ten in number. They are to be chosen and summoned by the Governor-General and are to hold office during his pleasure. The Governor-General's choice is, however, limited to those who are, or are likely to be, members of the Federal Legislature; for, it is provided that a Minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall, at the expiration of that period, cease to be a Minister. The salaries of the Ministers are to be fixed by an Act of the Federal Legislature, but the salary of a Minister cannot be varied during his term of office—"a device intended to secure that the Government may not be forced to do without Ministers through refusal to vote adequate salaries."*

METHOD OF
SELECTION.

In making appointments to the Council of Ministers the Governor-General would be required by the Instrument of Instructions, only a draft of which is as yet available, to "use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important communities) who will best be in a position collectively to command

* A. B. Keith, *A Constitutional History of India*, p. 334.

the confidence of the legislature But in so acting, he shall bear constantly in mind the need for fostering a sense of *joint responsibility* among his Ministers " (*Italics mine*)

RESPONSIBILITY OF MINISTERS.

Though there is no direct legal provision for the responsibility of the Ministers to the legislature, the Instrument of Instructions requires the Governor-General to secure that in practice It is, however, difficult to see how the Governor General can succeed in reconciling the Joint Responsibility of the Ministers to the legislature with representation of Federated States and important minorities so as to secure the formation of a homogeneous Cabinet, capable of working in team spirit, and progressive in its outlook This difficulty is all the greater when we bear in mind the composition of the legislature with its indirect election and communal representation of seats assigned to British India and nomination of States' representatives Besides, the experience of other federations has shown the necessity of forming a Cabinet which may command the confidence of the different federal units by giving adequate representation to each The development of provincial feeling in India may be depended upon to introduce this additional difficulty of "territorial representation." A Cabinet which satisfies that in addition to the inclusion of representatives of important communities and States may well be "a strange and fortuitous Noah's Ark " All these reasons give cause for fear that it may only assist the Governor-General to rally all conservative forces in the country and build up a colourless

or reactionary Ministry, composed of incongruous and heterogeneous elements, thereby negating the "Joint Responsibility" of the Ministry to the legislature. The task is more complicated than it is in the provinces where there are no nominees of the States' Rulers and there is no question of including States' representatives in the Cabinet. Moreover, Minorities which may not take serious notice of inadequate representation in some Provincial Ministries, as they may have a preponderant voice in others, will demand 'due' consideration at the Centre.

5. FUNCTIONS AND POWERS OF THE COUNCIL OF MINISTERS

MINISTERS ONLY TO ADVISE.

The functions of the Ministers extend to offering advice on all matters except those in which the Governor-General is required to act in his discretion. The Ministers do not legally form part of the "government"; all executive authority is formally vested in the Governor-General and hence all executive action is expressed to be taken in his name.

METHOD OF WORK.

The Governor-General is to allocate work and distribute portfolios among the Ministers, keeping reserved to himself the departments of Defence, External Affairs, Ecclesiastical Affairs, and Tribal Areas. The Governor-General in his discretion may preside at the meetings of the Council of Ministers and make rules for the more convenient transaction of business of the Government.

MINISTERIAL
ADVICE
WHEN BINDING

The Governor-General is normally to act on the advice of his Ministers but in several cases the Act of 1935 requires him to exercise his individual judgment. The most important of these are his Special Responsibilities with which he has been charged

6 SPECIAL RESPONSIBILITIES OF THE GOVERNOR
GENERAL

In the exercise of his functions, the Governor-General has the following Special Responsibilities —

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof,

(b) the safeguarding of the financial stability and credit of the Federal Government,

(c) the safeguarding of the legitimate interests of minorities,

(d) the securing of legal and equitable rights and the safeguarding of the legitimate interests of members of the public services

(e) the prevention of discrimination, by executive action, against British subjects domiciled in the United Kingdom and companies incorporated in that country,

(f) the prevention of executive action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment,

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof, and

(h) the securing of the due discharge of his functions with respect to which he is required to act in his discretion or exercise his individual judgment.

CHARACTER AND SIGNIFICANCE OF SPECIAL RESPONSIBILITIES

The Special Responsibilities of the Governor-General, it will be noticed, do not relate to any particular department, but cover the whole field of administration and cut across its entire fabric. Besides, the wording is so general and sweetly vague that there is hardly any conceivable question of administration which may not, by a slight stretch or twist, be shown to affect one of the Special Responsibilities of the Governor-General. Such words as 'peace and tranquillity of India', 'financial stability', 'legitimate interests,' and 'discrimination' can be interpreted in various ways and it is entirely left to the Governor-General to put any meaning on them and declare that one of his Special Responsibilities is affected. The scope of each of these Special Responsibilities is indicated in a general way in the Instrument of Instructions to the Governor-General, but the latter is given full freedom, subject to those Instructions, to interpret his Special Responsibilities.

THEIR PURPOSE

The reason why the Governor-General has been charged with these Special Responsibilities is not far to seek. The new constitution is based on the principle that complete responsibility and power cannot yet be transferred to Indians and there is an imperative necessity of over-riding powers being vested in the representatives of His Majesty, who may prevent undesirable developments and "hold the scales evenly between conflicting interests and to protect

those who have neither the influence nor the ability to protect themselves.'*

HOW THEY WILL
BE EXERCISED

The working of the provincial part of the constitution has, however, shown that prudence and circumspection on the part of the Governor-General and his Ministers may lead to the development of a healthy understanding by which the exercise of these reserve powers may not be found necessary in normal times. They may be allowed to rust by sheer disuse. But while this optimism may be justified by the experience of provincial administration, there is nothing to show that the framers of the Act contemplated such a development. The Joint Parliamentary Committee definitely declared that "the safeguards we contemplate have nothing in common with those mere paper declarations which have been sometimes inserted in constitutional documents, and are dependent for their validity on the good will or the timidity of those to whom the real substance of power has been transferred. They represent, on the contrary, a retention of power as substantial, and as fully endorsed by the law, as that vested by the Constitution of the United States in the President as Commander-in-Chief of the Army—but more extensive both in the respect of their scope and in respect of circumstances in which they can be brought into play"†

CONCLUSION

There is thus nothing to prevent the Governor General from exercising these powers as fully and freely as he may choose, the Joint Parliamentary Committee strangely enough regard these

* J P C. Report p. 14
† J P C. Report p. 12

not only as not inconsistent with responsible government but as a necessary complement to it. The correct view appears to be that of Dr. A. B. Keith who says: "Too narrowly interpreted, the (special) responsibilities might destroy the possibility of (ministerial) responsibility."*

7. FINANCIAL ADVISER TO THE GOVERNOR.

GENERAL

APPOINTMENT The Governor-General may in his discretion appoint a Financial Adviser to assist him in the discharge of his Special Responsibility for safeguarding the financial stability and credit of the Federal Government and also to give advice to the Federal Government upon any financial matters with respect to which he may be consulted. In making such appointment other than the first, the Governor-General shall consult his Ministers as to the person to be selected. The Financial adviser is to hold office during the pleasure of the Governor-General and his salary, allowances, conditions of service, etc., are to be decided by the Governor-General in his discretion.

CONSTITUTIONAL POSITION Such an officer, wholly responsible to the Governor-General and not subject to any parliamentary or ministerial control, may well be a cause of friction between the Council of Ministers, one of whose members will hold the Finance portfolio, and the Governor-General who has a Special Responsibility for safeguarding the financial stability and credit of the Federal Government.'

* Keith, A Constitutional History of India p. 331

8 ADVOCATE-GENERAL FOR THE FEDERATION

AN EXPERT
LEGAL ADVISER.

The Governor-General, exercising *his individual judgment*, is to appoint a person, being qualified to be appointed a judge of the Federal Court, to be Advocate-General*. He holds office during the pleasure of the Governor-General and is entitled to such remuneration as the Governor-General may, in his individual judgment, determine. It will be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor-General.

The Advocate-General has the right to speak in, and otherwise take part in the proceedings of, both Chambers of the Federal Legislature but is not entitled to vote.

9 THE FEDERAL RAILWAY AUTHORITY

REASONS FOR
ESTABLISHMENT

An important part of the executive authority of the Federation namely the administration of railways is vested by the Constitution in a separate statutory body known as the Federal Railway Authority. It was considered essential by His Majesty's Government that while the Federal Government and Legislature should exercise a general control over railway policy, "the actual control of the administration of railways should be placed in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon *business principles without being subject to political interference*"†. (Itakes mine.)

* For qualifications of a judge of the Federal Court see page 273
† J P C. Report, Vol. 1 p. 229

ITS COMPOSITION. The Authority is to consist of seven persons at least three of whom are to be appointed by the Governor-General in his discretion and the remaining on the advice of his Council of Ministers. Only those who have had experience in commerce, industry, agriculture, finance or administration are eligible for membership and those who have within the twelve months last preceding been members of the Federal or Provincial Legislature or servants of the Crown in India or Railway Officials in India are disqualified for appointment. Except during the first few years, the term of appointment of the members shall be five years and they are eligible for re-appointment for a further term not exceeding five years. The Governor-General exercising his individual judgment, may terminate the appointment of any member. Each member receives such salary and allowances as may be determined by the Governor-General exercising his individual judgment, provided that the emoluments of a member cannot be reduced during his term of office. The President of the Authority is to be appointed from among the members by the Governor-General in his discretion.

ITS EXECUTIVE OFFICERS.

There is to be at the head of the executive staff of the authority a Chief Railway Commissioner appointed by the Governor-General exercising his individual judgment, after consultation with the Authority. The Chief Railway Commissioner is to be assisted by a financial commissioner may be appointed by the Governor-General and such additional commissioners as the Authority on the recommendation of the Chief Com-

missioner may appoint. The Chief Railway Commissioner and the Financial Commissioner have the right to attend any meeting of the Authority and the Financial Commissioner has the right to refer any matter which relates to finance to the Authority. The Chief Railway Commissioner cannot be removed from office except by the Authority and with the approval of the Governor General exercising his individual judgment, and the Financial Commissioner can be removed only by the Governor-General, exercising his individual judgment.

ITS FUNCTIONS The functions of the Authority relate to the regulation, construction, maintenance and operation of railways. In discharging its functions, the Authority is required to act on business principles, due regard being had to the interests of agriculture, industry, commerce and the General public.

It is to be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities and as to secure that there may not be any unfair discrimination or uneconomic competition between different railway systems. Any complaint in such matters is to be referred to the Railway Tribunal* from whose decision an appeal lies to the Federal Court but no further. In order to give advice to the

* The Railway Tribunal is to consist of a President (being a judge of the Federal Court, appointed by the Governor General in his discretion after consultation with the Chief Justice of India) and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway administrative or business experience.

Authority in connection with any dispute between the public, a railway and the Authority as to rates or traffic facilities, provision is made for the appointment by the Governor-General of a Railway Rates Committee. No Bill or amendment affecting rates or fares to be charged on any railway can be introduced in the Federal Legislature except on the recommendations of the Governor-General.

**CONTROL BY
FEDERAL
GOVERNMENT**

In the following specified matters, the Authority is made subject to the Control of the Federal Government. *Firstly*, in the discharge of its functions, the Authority is to be guided by such instructions on questions of policy as may be given to it by the Federal Government. *Secondly*, the Authority is to transmit to the Federal Government all such information with respect to their business as the Governor-General may require to be so transmitted, specially information regarding matters which are likely to affect his special Responsibilities. *Thirdly*, the Federal Government may directly through its own officers perform certain functions for securing the safety of the travelling public and the railway workers, including the holding of inquiries into the cause of accidents. *Fourthly*, the Federal Legislature may, with the previous sanction of the Governor-General in his discretion, modify the rules relating to the appointment, qualifications and conditions of service of members of the Authority.

**FINANCE OF THE
AUTHORITY.**

The Authority is to maintain a "Railway Fund" into which all its receipts are to be paid, and from which all its ex-

penditure is to be defrayed. Any surplus on revenue account of the Authority is to be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed by the Federal Government the accounts of the Authority are to be audited and certified by the Auditor-General of India

CRITICISM. The establishment of the Federal Railway Authority on a statutory basis, with its composition influenced by the Governor General and its relation with the Federal Government strictly defined, will deprive the Council of Ministers of control over an important branch of administration. The provision errs on the side of caution and while intended to secure the management of railways on 'business principles,' may prove to be an impediment in the effective utilisation of the railways for the economic re-construction of the country

10 CONCLUSION

DYARCHY AT THE CENTRE

To sum up, the Federal Executive authority will be exercised in two different ways—the Reserved Departments to be administered by the Governor-General in his discretion and the Non-Reserved or Transferred departments to be *normally* administered by the Governor General on the advice of his Council of Ministers. This essentially dual or dyarchical control will be the distinguishing feature of the proposed Federal Executive. The Instrument of Instructions would, however, enjoin the Governor-General to encourage the practice of joint consultation between himself, his Counsellors and his Ministers and thereby "invite the collaboration of the Federal Ministry to the widest extent

compatible with the preservation of his own responsibility." Further, in matters of defence, the views of the Ministers are to be ascertained and the Finance Minister is to be consulted before estimates of proposed expenditure on defence are settled and laid before the Federal Legislature.

ITS PRACTICAL DANGERS. It is, however, difficult to see how the

two essentially different halves of the administration—the one increasingly responsible to the legislature and through it to the people and the other consisting of the Governor-General responsible to His Majesty through the Secretary of State—could co-operate at all. The experiment of Dyarchy in the provinces clearly demonstrated the futility of such expectations, and if in some provinces the two halves worked smoothly it was because the Ministers in charge of the Transferred departments relied for support on the official bloc in the legislature and, therefore, came to be looked upon as little better than Executive Councillors in charge of the Reserved departments. Thus it was by sacrificing the principle of Ministerial responsibility to the legislature that the executive functioned harmoniously at all.* There is no reason to believe that the same difficulties will not reappear in the Federation. "Divided Responsibility means blurred responsibility." The Simon Commission expressed themselves very frankly by admitting

* "But dyarchy failed to achieve its object, except to a limited extent. The evidence to prove this is that ministers generally did not consider the confidence of an elected majority in the legislature necessary for their continuation in office. . . . In spite of the defeat of ministers year after year they continued in office. In the United Provinces, during three out of the seven years from 1920-1927, the ministers could not have continued in office without the support of the official bloc. The same story is generally true of the state of things in Madras, Bihar and Orissa and Bengal." A. Appadurai, "Dyarchy in Practice" p. 267-68.

that "It would indeed be an astonishing result if, at a time when Dyarchy is abandoned in the provinces, the introduction of a similar principle were to be recommended at the Centre. The ultimate creation of responsible government at the Centre cannot be reached by constructing a Central Executive one part of which is not responsible for the other. We regard such a plan as *not only unworkable but as no real advance in the direction of developing central responsibility at all*"* (Italics mine)

CONCLUSION In the face of such an honest admission, it would not be unfair to conclude that the Federal Executive would either not function smoothly or would do so by being completely irresponsible to the legislature, and in either case no real progress towards the attainment of Responsible Government could be expected. In these circumstances, the Governor-General may well become the real and effective, and not merely a constitutional, head of the Federal Government

* Simon Commission Report Vol II p 137

CHAPTER VI

THE FEDERAL LEGISLATURE

The Federal Legislature will consist of His Majesty, represented by the Governor-General, and two Chambers to be known as the Council of State and the House of Assembly or Federal Assembly. Thus the existing bicameral form of the legislature will be continued.

✓ L Composition of the Federal Legislature

1. NUMBER OF SEATS AND THEIR DISTRIBUTION

THE FEDERAL ASSEMBLY

The Federal Assembly, or the Lower House, is to consist of a maximum number of 375 members out of whom 250 will be representatives of British India and not more than 125 will be the representatives of federated Native States. Thus, the Native States have been assigned one-third of the total number of seats though their population is only about one-fourth of the total Indian population. However, the actual number of seats taken up by the States will depend upon how many of them agree to accede to the Federation.

Out of 250 seats assigned to British India, four are non-provincial seats i.e., seats not assigned to any province; three of these are to be filled by representatives of commerce and industry and one by a

representative of labour. The remaining 246 seats are distributed as follows among the different provinces

Madras	37	N. W. F. P.	5
Bombay	30	Orissa	5
Bengal	37	Sind	5
United Provinces	37	Br. Baluchistan	1
Punjab	30	Delhi	2
Bihar	30	Ajmer-Merwara	1
C. P. & Berar	15	Coorg	1
Assam	10		
			Total 246

The distribution of 125 seats among the different States is also laid down by the Government of India Act, 1935, the more populous and important among them getting a larger number of seats. For example Hyderabad Deccan is entitled to 16, Mysore gets 7, Travancore 5, Gwalior 4, Kashmir 4 and Baroda 3. The smaller States get less representation and those that are too small to have even one representative are grouped together to send representatives by rotation.

THE COUNCIL OF STATE

The Council of State, or the Upper House, is to consist of a maximum number of 260 members of whom 156 will be representatives of British India and not more than 104 will represent the federated Native States. The States are thus given forty per cent. of the total number of seats as compared to one-third in the Assembly. The actual number of seats filled up by them will, as in the case of the Assembly, depend upon the number of States joining the Federation.

Out of 156 seats assigned to British India, ten are assigned on a non-provincial basis, as follows :— Europeans 7, Anglo-Indians 1 and Indian Christians 2. Six other seats are to be filled by persons *nominated* by the Governor-General in his discretion. This power has been given to him "to redress inequalities of representation which may have resulted from election," bearing in mind the necessity of securing representation of the Scheduled Castes and women. The remaining 140 seats are distributed among the different provinces as follows :—

Madras	.. 20	N. W. F. P.	.. 5
Bombay	.. 16	Orissa	.. 5
Bengal	.. 20	Sind	.. 5
U. P.	.. 20	Br. Baluchistan	.. 1
Punjab	.. 16	Delhi	.. 1
Bihar	. 16	Ajmer-Merwara	.. 1
C. P. & Berar	.. 8	Coorg	.. 1
Assam	.. 5		—
			Total 140

The distribution of 104 seats among the States is prescribed by the Act. The following are the seats assigned to the more important States:—Hyderabad Deccan 5, Mysore 3, Kashmir 3, Gwalior 3, Baroda 3 and Travancore 2.

2 DISTRIBUTION OF SEATS AMONG COMMUNITIES
AND INTERESTS ✓RESERVATION
OF SEATS

In assigning seats to different provinces, both in the Assembly and the Council of State, reservations have been made for different *communities and interests*. For example, of the total number of thirty seats assigned to Bombay province in the Federal Assembly, 6 are reserved for Muhammadans, 1 each for Anglo-Indians, Europeans and Indian Christians, 3 for Commerce and Industry, 1 for Landholders, 2 for Labour and 2 for women, thus leaving only (13) seats for the General Constituency which includes Hindus Parsis, Sikhs, Jains, etc., again out of these 13, 2 are reserved for representatives of the Scheduled Castes. These reservations are made on the ground of safeguarding the position of minorities and certain special interests which require protection. Though the assignment of seats on a communal basis, so as to guarantee some seats to the minorities, may not appear to be an ideal arrangement, it is, at present, absolutely necessary. It is, however, remarkable that even in those provinces like the Punjab, Bengal, Sind and North-West Frontier where the Muhammadans are not a minority community, seats have been reserved for them'. The following tables set out the distribution of seats among the different communities and interests in the Federal Assembly and the Council of State

TABLE OF SEATS
The Federal Assembly
Representatives of British India

1	2	3	4	5	6	7	8	9	10	11	12	13
Province	Total Seats	Total of General Seats	General Seats reserved for Sche- dule Castes, &c.	Sikh Seats	Maho- medan Seats	Anglo- Indian Seats	Euro- pean Seats	Indian Chris- tian Seats	Seats for Com- merce & Indus- try	Lan- d- holders Seats	Seats for La- bour	Wo- men's Seats
Madras	37	19	4	-	8	1	1	2	2	1	1	2
Bombay	30	13	2	-	6	1	1	1	3	1	2	1
Bengal	37	10	3	-	17	1	1	1	-	1	1	1
United Provinces	37	19	3	-	12	1	1	1	-	1	1	1
Punjab	30	6	1	6	14	-	1	1	-	1	1	1
Bihar	30	16	2	-	9	-	1	1	-	1	1	1
C. P. & Berar	15	9	2	-	3	-	-	1	-	1	1	-
Assam	10	4	1	-	3	-	-	-	-	-	-	-
N. W. F. Province	5	1	-	-	4	-	-	-	-	-	-	-
Orissa	5	4	1	-	1	-	-	-	-	-	-	-
Sind	5	1	-	-	3	-	-	-	-	-	-	-
British Baluchistan	1	1	-	-	1	-	-	-	-	-	-	-
Delhi	2	1	-	-	1	-	-	-	-	-	-	-
Ajmer-Merwara	1	1	-	-	-	-	-	-	-	-	-	-
Coorg	1	1	-	-	-	-	-	-	-	-	-	-
Non-Provincial Seats	4	-	-	-	-	-	-	-	3	-	1	-
Total	250	105	19	6	82	4	8	8	11	7	10	9

TABLE OF SEATS
The Council of State
Representatives of British India

1 Province or Community	2 Total Seats	3 General Seats	4 Seats for Scheduled Castes	5 Sikh Seats	6 Mahome- dan Seats	7 Women's Seats
Madras	20	14	1	—	4	1
Bombay	16	10	1	—	4	1
Bengal	20	8	1	—	10	1
United Provinces	20	11	1	—	7	1
Punjab	16	3	—	4	8	1
Bihar	16	10	1	—	4	—
C P & Berar	8	6	—	—	1	—
Assam	5	3	—	—	1	—
N W F Province	5	1	—	—	4	—
Orissa	5	4	—	—	1	—
Sind	5	2	—	—	3	—
British Baluchistan	1	—	—	—	1	—
Delhi	1	1	—	—	—	—
Ajmur-Merwara	1	1	—	—	—	—
Coorg	1	—	—	—	—	—
Anglo-Indians	1	—	—	—	—	—
Europeans	7	—	—	—	—	—
Indian Christians	2	—	—	—	—	—
Total	150	75	6	4	49	6

3. THE METHOD OF REPRESENTATION

STATES RE-
PRESENTATIVES
TO BE RULERS'
NOMINEES.

The representatives of the federated Native States are to be *nominated* by the Rulers of the States, the people of the States having no legal voice in their selection. There is no restriction of any kind imposed on the choice made by the rulers; there is no provision made even for consultation with the people, before such representatives are nominated. :

REPRESENTA-
TIVES OF
CHIEF COMMIS-
SIONERS'
PROVINCES.

The representatives of the Chief Commissioners' provinces are to be returned in a manner 'which may be prescribed,' except in the case of Coorg where, the seat assigned in the Federal Assembly to that province is to be filled by a person elected by the members of the Legislative Council of that province.

REPRESENTA-
TIVES OF
GOVERNORS'
PROVINCES.

The seats assigned to Governors' provinces are to be filled by *election*, there being no nominations, except with regard to six seats in the Council of State. But while the elections to the Council of State will be direct, the members of the Federal Assembly will be indirectly elected. *Indirect Election* simply means "Election by the Elected." Thus, while, the members of the Council of State will be returned directly by the voters in the different constituencies, those of the Federal Assembly will be elected by the members of the Provincial Assemblies, who are themselves elected by the voters.

COMMUNAL
ELECTORATE

Moreover, the elections to both Chambers will be on the basis of communal electorates. Thus, the Muhammadan or Sikh seats assigned to a province in the Council of State will be filled by election in which only the Muhammadan or Sikh voters of that province, as the case may be, can exercise the right of vote, and Muhammadan or Sikh seats assigned to a province in the Federal Assembly will be filled by election in which only the Muhammadan or Sikh members of the Legislative Assembly of that province can take part.

REPRESENTA-
TIVES OF
SCHEDULED
CASTES.

In the case of the representatives of the Scheduled Castes, the method of separate electorates, though originally conceded by the Communal Award* was modified in accordance with the provisions of the Poona Pact, and the method finally adopted is a *via media* between separate and joint electorates. There are to be two elections—one primary and the other secondary. At the primary election only those members of the Scheduled Castes who were successful candidates in the Primary Election to the Legislative Assembly of the province shall

* The Communal Award is the Award given in 1932 by the late Mr. Ramsay MacDonald the then Prime Minister of Great Britain. During the session of the Second Round Table Conference in London some of the members representing the different communities of India approached the Prime Minister to decide the question of distribution of seats and the method of representation in the legislature among the different Communities. The Award given in accordance with the request was adopted by the Government of India Act 1935 and could be altered only with the mutual consent of the communities concerned.

The Communal Award recommended separate electorates for all important Communities as also for the Scheduled Castes. The Hindu Community disapproved of separate electorates for the Scheduled Castes and accordingly a pact was made at Poona between Mahatma Gandhi representing the caste Hindus and Dr. Ambedkar representing the Scheduled Castes agreeing to a form of election which was a compromise between Separate and Joint Electorates. This pact is known as the Poona Pact. The Communal Award was modified in accordance with the provisions of the Poona Pact.

exercise the right of vote and elect four candidates for every seat to be filled.* At the secondary or final election, only these four would be entitled to stand for election but the right to vote will be exercised by all the members of the Legislative Assembly who occupy the General seats.

**ELECTORAL
COLLEGES FOR
SMALL GROUPS.**

In view of the small number of seats in the provincial legislatures assigned to women, Anglo-Indians, Europeans and Indian Christians, the representatives of these classes in the Federal Assembly are to be elected not by the members of each Provincial Legislative Assembly belonging to that class but, by *electoral colleges* consisting of the members of all Provincial Legislative Assemblies belonging to that class. Thus, a seat assigned to women of a province is to be filled by an electoral college consisting of all women members of provincial Legislative Assemblies.

4. TENURE

**THE FEDERAL
ASSEMBLY.**

The term of the Federal Assembly is to be five years as compared to three which was the period prescribed for the Central Legislative Assembly by the Act of 1919. At the expiration of that period of five years, the Assembly will be automatically dissolved. The Governor-General, however, has the power to dissolve it earlier. He can also prorogue any session of the Assembly; he has no power to extend its life beyond the period of five years.

**THE COUNCIL
OF STATE.**

The Council of State is to be a permanent body not subject to dissolution, either at the end of any fixed period or by the Governor-General. Instead, one third of the members

* See Chap. IX p. 151.

are to retire every third year by rotation, thus bringing about a complete change in nine years.* The Governor-General can prorogue any sessions of the House

5 GENERAL REMARKS

The prominent characteristics of the composition of the proposed Federal Legislature may now be summed up

NO EQUALITY OF STATUS IN THE UPPER CHAMBER. *In the first place, the proposed Legislature, like all Federal legislatures, will be bicameral, but whereas in other Federation e.g. the United States of America, Australia and Switzerland, the federal units are given equality of status and representation in the Upper Chamber, that has not been possible in India. The units are of such varying size and importance that any attempt at establishing such equality would only invite ridicule and make the whole scheme appear fantastic*

EXCESSIVE REPRESENTATION TO STATES *Secondly, the number of seats assigned to the Native States, particularly in the Council of State appears to be excessive, this has given rise to a suspicion that the States are being used as a lever to prop up the conservative elements in the country. But, this will prove to be a real grievance only if all the States accede to the Federation so that the maximum number of seats allotted to them are filled up*

* Upon the first constitution of the Council of State one-third of the members first chosen shall be chosen to serve for three years only one-third for six years and one-third for nine years thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant. Similarly of the six nominated members upon the first constitution of the Council of State two of the persons shall be chosen to serve for three years two for six years and two for nine years

ELECTION LESS
FREQUENT.

Thirdly, the extension of the tenure of the Assembly to five years is, on the whole, a retrograde step as it will tend to lessen the responsibility of the legislators to their constituencies. The more frequent the elections, the greater is the opportunity given to the electorate to establish contact with its members; and even allowing for administrative inconvenience of too frequent elections, five years' period would be a little too long in the case of India. Moreover, the Council of State has been made a permanent body not subject to dissolution; this is highly objectionable as it might keep the body immune from all popular influences.

NOMINEES OF
RULERS.

Fourthly, nominations to the Legislature by the Governor-General have, except for six seats in the Council of State, been abandoned. This is a very welcome step, but since the representatives of the federated Native States will be the nominees of the rulers, a new conservative element, representing not the *people* of the States but the *rulers* thereof, will take the place of the present members nominated by the Governor-General. The difference between the two may turn out to be of the celebrated order of Tweedledum and Tweedledee.

COMMUNAL
ELECTORATES

Fifthly, Communal Electorates are to continue to be the basis of election to the Federal Legislature. This will only perpetuate and strengthen communal disharmony and thereby prevent the formation of any *political parties*, as distinguished from mere communal factions. It is well-known that Parliamentary Government can never function smoothly in the absence of well-organised

political parties. Moreover, the principle of Separate Electorates, far from being gradually restricted, is being extended to sections which have opposed it! That women should get separate electorates inspite of their united opposition to them, appears very strange *

INDIRECT ELECTIONS.

And lastly, indirect elections to the Federal Legislative Assembly will considerably diminish the influence of the people over the legislators. The Joint Parliamentary Committee, 1934, themselves admitted that "a close and intimate contact between a representative and his constituency is of *the essence of representative government*, so that the former may be conscious of a genuine responsibility to those whom he represents, and the latter that they are able to influence his actions and in case of need call him to account." (*Italics mine*) But the Committee felt constrained, in view of certain practical considerations, to recommend the system of indirect elections as proposed by the Simon Commission. Direct elections would, according to them, be unmanageable in view of the large constituencies covering widely separated areas. The extension of franchise accompanying the introduction of the new constitution would make direct elections administratively difficult, and the problem would assume more serious proportions as the right to vote was extended further with the lapse of time. The difficulties involved are summed up in the following passage — "Where a single constituency may be more than twice as large in area as the whole of Wales, a candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were

* For criticism of Communal Electorates see Chap. III, pp. 57-59

not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy; nor could a member after election hope to guide or inform opinion in his constituency."^a

AN ALTERNATIVE

While recognising these difficulties, it must be said that there is one way in which the problem could be solved without surrendering the principle of direct election. This can be done by increasing the number of members of the Federal Assembly, thereby reducing the size of the constituencies. Too large an increase in membership would, no doubt, detract from the efficiency of the Assembly as a deliberative body, but the present prescribed number of 375 could easily be increased to about six hundred, considering that even the United Kingdom with less than one-eighth of the total population of India has 615 members in the House of Commons.

CONCLUSION

It is possible that when the franchise is ultimately extended to all adults, the constituencies may become too large and populous to be handled conveniently, but there does not appear to be any intention on the part of British Parliament to introduce such an extension in the near future, and hence, there is no reason for the immediate adoption of indirect elections.

II. Procedure in the Federal Legislature

1. SUMMONS, MEETING AND PROROGATION

GOVERNOR-GENERAL'S POWERS.

The Governor-General may, acting in his discretion, *summon* either Chamber to meet at such time and place as he thinks

^a J. P. C. Report, Vol. I. p. 109

fit. It is, however, obligatory on him to summon the Federal Legislature to meet at least once every year, so that twelve months shall not intervene between the last sitting in one session and the first sitting in the next session. The Governor-General may, acting in his discretion *prorogue* either Chamber or *dissolve* the Federal Assembly, the Council of State, being a permanent body is not subject to dissolution.

2 OFFICERS OF CHAMBERS

APPOINTMENT SALARY AND REMOVAL

The Federal Assembly will have a Speaker and, in his absence, a Deputy Speaker to preside over its meetings. Similarly, the Council of State will have a President and a Deputy President. They shall all be chosen by the respective Chambers from among their own members. Thus for the first time the Council of State will have an elected President. They are entitled to such salaries as may be fixed by Act of the Federal Legislature. Any of them may be removed by a resolution of the Chamber passed by a majority of all the then members of the Chamber, provided that at least fourteen days' notice has been given of the intention to move the resolution.

RIGHTS AND PRIVILEGES.

The Speaker, or the President, or a person acting as such, has no vote in the first instance but has a casting vote in case of equality of votes on any issue before the House. No officer or other member acting as such shall be subject to the jurisdiction of any Court in respect of the exercise by him of the powers of regulating procedure or conduct of business or for maintaining order*.

* For functions and powers of these officers see Chapter III p 60

3. OATH.

Members of either Chamber must, before taking their seats, make an oath of allegiance or a solemn affirmation of their loyalty to His Majesty the King Emperor of India, his heirs and successors.

4. QUORUM.

The minimum number of members required for the carrying on of business, in either Chamber, is fixed at one-sixth of the total number of members of the Chamber. In the absence of this requisite number it is the duty of the Speaker or the President, as the case may be, to *adjourn* the Chamber or to *suspend* the meeting until there is a quorum.

5. DISQUALIFICATIONS.

A person is disqualified for being chosen as a member of the Federal Legislature if:—

(1) he holds office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder; or

(2) he is of unsound mind and stands so declared by a competent Court; or

(3) he is an undischarged insolvent; or

(4) he has been convicted and found guilty of corrupt or illegal practices in elections; or

(5) he has been convicted of any other offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor-General acting in his discretion may allow in any particular case, has elapsed since his release; or

(6) as a candidate or the agent of a candidate for a seat in any legislature, he has failed to lodge a return of election expenses within the prescribed

time, unless five years have elapsed, or the Governor-General acting in his discretion has removed the disqualification or

(7) he is serving a sentence of transportation or of imprisonment for a criminal offence

If any of the above disqualifications is incurred by a person after his election, he ceases to be the member of the Legislature

MEMBERSHIP OF TWO CHAMBERS No person can be a member of both Chambers of the Federal Legislature. The Governor-General, exercising his individual judgment, shall make rules for depriving a person who is chosen a member of both Chambers, of his seat in one Chamber or the other

LONG ABSENCE If for sixty days a member of either Chamber is, without permission of the Chamber, absent from all its meetings, the Chamber may declare his seat vacant

PENALTY FOR SITTING WHEN NOT ENTITLED If a person sits or votes as a member of either Chamber when he is not qualified, or is disqualified, for membership he shall be liable in respect of each day on which he sits or votes to a penalty of five hundred rupees

6 SALARIES AND ALLOWANCES OF MEMBERS

Members of the Federal Legislature will be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Legislature

7. PRIVILEGES OF MEMBERS

FREEDOM OF
SPEECH

Subject to the provisions of the Government of India Act, 1935,

and to rules and standing orders regulating the procedure of the Federal Legislature, the members shall have freedom of speech in the legislature, and will not be liable to any proceedings in any Court in respect of anything said or vote given in the legislature or a Committee thereof. No person is liable in respect of any publication, authorised by either Chamber of the legislature of any report, paper, vote or proceedings.

RESTRICTIONS ON
FREEDOM OF
SPEECH.

The following restrictions on the freedom of speech are laid down in the Act of 1935.

1. No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or of a High Court or of a province or of a Federated State, in the discharge of his duties.

2. If the Governor-General, acting in his discretion, certifies that the discussion of a Bill or a clause or amendment, introduced or proposed to be moved, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace and tranquillity of India or any part thereof, he can direct that no proceedings shall be taken in relation to that Bill, clause or amendment, as the case may be.

.. The other restrictions are such as may be contained in the rules of procedure of the Chambers.

8 RULES OF PROCEDURE

GOVERNOR
GENERAL'S
POWERS

Each Chamber is to make rules for regulating its procedure and conduct of business, but, the Governor-General acting in his discretion, after consultation with the President or the Speaker, as the case may be, is to make rules for the following purposes —

(a) for regulating the procedure in relation to any matter which affects the discharge of his functions with respect to which he is required to act in his discretion or to exercise his individual judgment,

(b) for securing the timely completion of financial business,

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any State, other than a matter with respect to which the Federal Legislature has power to make laws for that State,

(d) for prohibiting, save with the consent of the Governor-General in his discretion, the discussion of or the asking of questions on, any matters connected with —

- (i) relations between His Majesty, or the Governor General and any foreign State or province, or
- (ii) the tribal areas, or (iii) the administration of any excluded area, or
- (iv) any action taken in his discretion by the Governor-General in relation to the affairs of a province, or

- (v) the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof.

ENGLISH
LANGUAGE
TO BE USED.

All proceedings in the Federal Legislature shall be conducted in the English language, but the rules of procedure shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

9. RIGHT OF GOVERNOR-GENERAL TO ADDRESS AND SEND MESSAGES TO CHAMBERS

The Governor-General may, acting in his discretion, address either Chamber of the Federal Legislature or both Chambers assembled together; and may, for that purpose, require the attendance of members. He may also send messages to either Chamber, and a Chamber to whom any such message is sent shall, with all convenient dispatch, consider any matter which they are required by the message to take into consideration.

10. RIGHTS OF MINISTERS, COUNSELLORS AND ADVOCATE-GENERAL AS RESPECTS CHAMBERS

Every Minister, every Counsellor and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, either Chamber, any joint sitting or any committee of the legislature of which he may be named a member.

They are entitled to vote only in that Chamber of which they are regular members

✓III. Functions and Powers of the Federal Legislature

The functions and powers of the proposed Federal Legislature are laid down in the Government of India Act, 1935. If the legislature exceeds the limits set by the Act, the Federal Court is competent to declare such acts as *ultra vires*. The powers of the legislature may be classified under three headings—Legislative Powers, Financial Powers, and Control of the Executive.

A. Legislative Powers.

1✓ SCOPE OF LEGISLATION

FEDERAL VERSUS PROVINCIAL OR STATE LEGISLATION	In accordance with Federal principles, the scope of Federal Legislation including the right to levy taxation, is set out so as to be clearly distinguished from the scope of Provincial (and State) legislation and taxation. The distribution of powers between the Federation on the one hand, and the provinces and federated States on the other, has been discussed fully in Chapter IV. Here we may only note down that the Federal Legislature will, according to that distribution, be competent to pass laws applicable to British India and the federated States on matters mentioned below.
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IN BRITISH
INDIA.

With regard to British India, the Federal Legislature can legislate on

✓ (a) all matters included in the Federal Legislative List;

✓ (b) on all matters included in the Concurrent Legislative List; the provincial legislatures are also competent to pass laws on such matters put in case a Federal law conflicts with a Provincial law as respects a matter included in the Concurrent Legislative List, the Federal law prevails, and the provincial law is null and void to the extent to which it is repugnant to the Federal law. But when a conflicting provincial law, having been reserved for the signification of His Majesty, or assent of the Governor-General it prevails over the Federal law in that particular province;

✓ (c) on matters included in the Provincial Legislative List for the Chief Commissioners' provinces;

✓ (d) on matters included in the Provincial Legislative List, for Governors' provinces under two special circumstances:—

✓ (i) if authorised by resolutions passed by Chambers of two or more provinces praying for such legislation and then subject to amendments in those provinces;

✓ (ii) if the Governor-General so authorises the Federal Legislature by issuing a Proclamation of Emergency and then subject to the previous sanction of the Governor-General.

IN FEDERATED
NATIVE STATES

With regard to the federated Native States, the scope of federal legislation is governed by the terms of the Instruments of Accession signed by the rulers of the different States. There may not, therefore, be any uniformity in this matter. Whether a particular Federal law applies to a federated State will depend upon the terms of the Instrument of Accession of that State.

This scope is, however, subject to three main limitations

ITS CHARACTER
AS A NON SOVER-
EIGN LAW MAKING
BODY

Firstly, the Indian Legislatures being non-sovereign law-making bodies cannot affect the power of British Parliament to legislate for British India or any part thereof, nor can the Federal, or the Provincial, Legislature make any law affecting the Sovereign or the Royal Family, or the succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the laws of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize Courts, or, unless expressly permitted, to make any laws amending the Government of India Act, 1935, or any Order-in Council made thereunder

Thus the Indian Legislatures have clearly subordinate law-making powers derived from the British Parliament whose legal supremacy remains inviolate and intact. They have no constituent powers and cannot, therefore, alter the constitution of India

PROVISIONS WITH
RESPECT TO
DISCRIMINATION.

Secondly, the following provisions with respect to prevention of discrimination further limit the scope of Federal as well as Provincial Legislation :—

1. British subjects domiciled in the United Kingdom cannot be denied the right of entry into British India nor could any disability be imposed on them in regard to travel, residence, the holding or disposal of property, the holding of public office or the carrying of any occupation, trade or profession, in British India.

2. British subjects domiciled in the United Kingdom, or Burma, and Companies incorporated under the laws of the United Kingdom, or Burma, cannot be subjected to heavier taxation than if they had been domiciled in British India, or incorporated under the laws of British India.

3. No ship, or aircraft registered in the United Kingdom shall be subjected to any treatment which is discriminatory in favour of ships or aircraft registered in British India.

4. Companies incorporated under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant or subsidy to the same extent as is payable to companies incorporated under the laws of British India.

5. Professional and technical qualifications for the practising of any occupation, or for carrying on any trade, or for holding any office, shall not be so prescribed by any legislature so as to exclude those holding diplomas from the United Kingdom, except

with the previous sanction of the Governor General in the case of the Federal Legislature, or of the Governor in the case of the Provincial Legislature. The Governor General and the Governors shall not give such sanction unless they are satisfied that persons who already hold such diplomas would not be adversely affected.

SUSPENSION OF THE PROVISIONS. These provisions with respect to discrimination hold good only so long as corresponding discriminatory treatment is not shown in the United Kingdom against Indians or Indian Companies. Moreover, these provisions may be suspended if after the establishment of the Federation a convention is made between His Majesty's Government and the Federal Government ensuring similarity of treatment to each other's nationals and Companies

RECIPROCITY The main reason for the inclusion of these provisions was the fear, on the part of Britain, that the British nationals and Companies may not receive a fair treatment at the hands of Indian legislators. An ostensible justification for the provisions is that they are based on the principle of "reciprocity." But "the number of Indians residing in the United Kingdom and the number of Indian Companies doing business there is so negligible compared to the huge British vested interests in India, whether in the Services or in the capital invested in trade or shipping with India and in industries and plantations in India, that reciprocity in such conditions is at best a painful joke"*

* Chintamani and Mhasani *India a Constitution at Work*, p. 82.

GOVERNOR-
GENERAL'S
POWER TO STOP
DISCUSSION.

And *thirdly* there is a general power vested in the Governor-General by which he can stop proceedings in the legislature with

respect to any Bill, clause, or amendment, if he certifies that the discussion of such Bill, clause or amendment would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India, or any part thereof.

NATURE OF THE
LIMITATIONS.

Subject to the limitations set out above, the Federal Legislature has

power to make laws for British India and the federated Native States. The first limitation is a symbol of India's political subordination; the second limitation is calculated to tie the hands of the legislature in matters of commercial policy and breathes an unpleasant note of suspicion and the last is in the nature of a reserve power in the hands of the Governor-General to check the introduction or passage of undesirable legislation.

2. LEGISLATIVE PROCEDURE

The following basic principles of legislative procedure, to be followed in the Federal Legislature, are laid down by the Government of India Act, 1935. The details are to be filled by rules made under the Act.

PREVIOUS
SANCTION OF THE
GOVERNOR-
GENERAL.

The following kinds of Bills or amendments cannot be moved in the Federal Legislature without the *previous sanction* of the Governor-General in his

discretion:—

Any Bills or amendments affecting

- (s) any Act of Parliament extending to British India, or
- (b) any Governor-General's or Governor's Act or Ordinance issued by them in their discretion, or
- (c) any matters in which the Governor-General is required to act in his discretion, or
- (d) any Act relating to any police force, or
- (e) the procedure for criminal proceedings in which European British subjects are concerned, or
- (f) the grant of relief from any federal tax on income in respect of income taxed or taxable in the United Kingdom, or
Subjecting
- (g) persons not resident in British India, or Companies not wholly working in British India, to greater taxation than persons resident in, and Companies wholly controlled and managed in, British India

BROAD PRINCIPLES OF PROCEDURE A Bill, other than a Financial Bill, may originate in either Chamber A Financial Bill must originate in the lower Chamber A Bill becomes an Act if it is passed by both Houses of the Legislature and is assented to by the Governor-General A Bill is deemed to have been passed by the two Chambers of the Legislature if it is agreed to by both Chambers, either without amendment, or with

such amendments only as are agreed to by both Chambers.

**DISAGREEMENT
BETWEEN THE
CHAMBERS.**

If a Bill passed by one Chamber is rejected by the other Chamber, or the Chambers have finally disagreed

as to the amendments to be made in the Bill, or if more than six months elapse from the date of the reception of the Bill from the other Chamber without the Bill being presented to the Governor-General for his assent, the Governor-General, acting in his discretion, may call a *joint sitting* of the two Chambers. Such a joint sitting may be convened by the Governor-General even if there has been no rejection or final disagreement as to the Bill between the two Houses or even if the said period of six months has not elapsed, if it appears to him that the Bill relates to finance or to any matter which affects the discharge of his functions in which he is required to act in his discretion or to exercise his individual judgment, and that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay. At such a joint sitting, the President of the Council of State takes the chair. If at the joint sitting the Bill is carried with such amendments as are agreed to by a majority of the total number of members of both Chambers present and voting, it shall be considered to have been passed by both Chambers.

**3. LEGISLATIVE POWERS OF THE GOVERNOR-
GENERAL**

**FOUR
ALTERNATIVES.**

When a Bill is passed by both Chambers, it is to be presented to

the Governor-General who may, acting in his discretion, do any of the following :—

- (1) he may *assent* in His Majesty's name to the Bill, in which case the Bill becomes an Act, or
- (2) he may *withhold assent*, in which case the Bill lapses, or
- (3) he may *return* the Bill to the Chambers with message requesting that they will reconsider the Bill, or some of its provisions, and will, in particular, consider the desirability of introducing any such amendments as he may recommend, in this case, the Chambers shall reconsider the Bill accordingly and present it again for the assent of the Governor-General, or
- (4) he may reserve the Bill for the signification of His Majesty's pleasure thereon, such a Bill becomes an Act if within twelve months of its presentation to the Governor-General, the latter announces by public notification that His Majesty has assented thereto

DISALLOWANCE BY HIS MAJESTY

Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the date of the Governor-General's assent.

GOVERNOR GENERAL'S POWERS OF CHECKING LEGISLATION

The Governor-General is thus armed with full powers to prevent the passage of any law which he considers undesirable without assigning any reason. And an Act duly assented to by him may be set aside by His Majesty. The authority of the Chamber may, therefore, be rendered completely nugatory by frequent exercise of such powers

**GOVERNOR-
GENERAL'S
POWERS OF
SECURING
NECESSARY
LEGISLATION.**

The Governor-General can not only veto undesirable legislation, but has also been empowered to enact legislation on his own authority without

obtaining the necessary approval of the legislature. He may in *the first place*, issue Ordinances when the Federal Legislature is not in session; *secondly*, he may issue Ordinances at any time with respect to certain subjects; and *thirdly*, he may enact permanent laws in the shape of the Governor-General's Acts.

**(a) ORDINANCE DURING THE RECESS OF THE
LEGISLATURE**

TIME AND MANNER OF ISSUE. If at any time when the Federal

Legislature is not in session, the Governor-General considers it necessary to take immediate action, he may promulgate an Ordinance. He is expected to issue such an Ordinance on the advice of his Ministers, but to that there are two exceptions.

1. If the Ordinance relates to any subject which would have required his previous sanction if it had been embodied in a Bill, the Governor-General shall exercise his *individual judgment*.

2. If he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty, he shall not issue it without *instructions from His Majesty*.

DURATION.

Such an Ordinance has the force of an Act of the Federal Legislature, and shall be laid before both Chambers of the Federal

Legislature It automatically ceases to operate at the expiration of six weeks from the reassembly of the Legislature, or even before the expiration of that period, if resolutions disapproving it are passed by both Chambers. It may also be disallowed by His Majesty, or may be withdrawn by the Governor-General.

**CONSTITUTIONAL
SIGNIFICANCE**

This type of ordinance is merely in the nature of an expedient to enable the Executive to secure an urgent piece of legislation when the legislature does not happen to be in session. Since it is normally to be promulgated on the advice of the Ministers, and is of short and limited duration and is liable to be turned down by an adverse vote of the legislature, it cannot be regarded as derogatory to the powers of the legislature, except in a strictly technical sense.

**(b) ORDINANCES ISSUED AT ANY TIME WITH
RESPECT TO CERTAIN SUBJECTS**

This type of Ordinance is, however, more important as it constitutes a definite breach in the legislative powers of the two Chambers. It is of a different nature and serves a different purpose from that of an Ordinance issued during the recess of the legislature.

**TIME AND MANNER
OF ISSUE**

If at any time, (that is, even when the Federal Legislature may be in session) the Governor-General is satisfied that *for the discharge of any of his functions in so far as he is required to act in his discretion or to exercise his individual judgment immediate action is necessary*, he may in his discretion promulgate an Ordinance.

DURATION.

Such an Ordinance has the same force as Act of the Federal Legislature and continues in operation for any period, not exceeding six months, that may be prescribed in the Ordinance. The Governor-General can, by issuing a subsequent Ordinance, extend the original ordinance for a further period, not exceeding six months. It may be disallowed by His Majesty or withdrawn at any time by the Governor-General. If it is an Ordinance extending a previous Ordinance for a further period, it is to be communicated to the Secretary of State and is to be laid before each House of Parliament.

CONSTITUTIONAL
SIGNIFICANCE.

The Governor-General's power to issue such ordinances vitally affects the authority of the Federal Legislature. These Ordinances may be issued even when the Chambers are in session and without so much as consulting the Ministers or the legislature which cannot terminate them by passing adverse resolutions. Besides, these Ordinances are of a much longer duration than those issued during the recess of the legislature. It must, however, be noted that such Ordinances can be promulgated only with regard to matters in which the Governor-General is required to act in his discretion, or to exercise his individual judgment. This would give the impression that the field of their operation would be narrow. But there are so many matters in which the Governor-General is required to so act, that this need not be any material limitation on his power. For example, the vague and general phraseology of the Special Responsibilities of the Governor-General, in the discharge of which he is to exercise his individual judgment, would be enough to bring almost

any conceivable thing within the scope of these Ordinances. Prevention of any grave menace to the peace and tranquillity of India, the safeguarding of the financial stability and credit of the Federal Government and the safeguarding of the legitimate interests of minorities not to mention the others, would offer an almost unlimited scope for the exercise of this power.

The only legal restriction on the Governor-General, in this respect is the necessity of communicating with his superiors, the Secretary of State and the British Parliament. That could not be regarded as adequate by the Chambers of the Federal Legislature and by those whom they represent.

(c) GOVERNOR-GENERAL'S ACTS

The Governor-General can also enact permanent laws by passing Governor-General's Acts

<p>WHEN AND HOW ENACTED</p>	<p>If, at any time, that is, even when the Federal Legislature is in session, it appears to the Governor-General that for the purpose of enabling him to discharge his functions in so far as he is required to act in his discretion or to exercise his individual judgment, it is necessary to secure legislation, he may, in his discretion, by message to both Chambers, explain the circumstances necessitating such legislation and, either enact forthwith a Governor General's Act, or attach to his message the draft of the Bill which he may convert into such Act after the expiration of one month, with such amendments as he may deem necessary. Before doing so, he shall consider any address which may have been presented to him in that connection by either Chamber within that period of one month.</p>
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DURATION. A Governor-General's Act shall have the same force and effect as an Act of the Federal Legislature. It is law not for any limited period, but *permanently*. It may, however, be disallowed by His Majesty. Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before both houses of Parliament.

CONSTITUTIONAL SIGNIFICANCE The power of the Governor-General to secure *permanent* legislation with a mere stroke of the pen without any consultation with the Ministers and, if he so desires, without any discussion in the legislature, even when it may be in session, is a remarkable feature of the new constitution.

4. CONCLUSION

GOVERNOR-GENERAL'S OMNIPOTENCE The whole picture of the legislative powers of the Federal Legislature, as prescribed by the terms of the constitution, brings out the utter helplessness of the Chambers. Provisions regarding prevention of discrimination, necessity of obtaining Governor-General's previous sanction, the Governor-General's right to stop any discussion, the Governor-General's powers of withholding assent to any Bill, or reserving it for the signification of His Majesty, or returning it to the Chambers for reconsideration—all these reduce the Chambers to a position of distinct subordination. On the other hand, the Governor-General by checking legislation in the above-mentioned ways, or by issuing Ordinances and enacting Acts may easily dominate the Federal Legislature in the sphere of law-making.

B. Financial Powers.

The powers of the Federal Legislature over

finance relate to the raising and spending of the revenues of the Federation

1 RAISING OF REVENUES

FINANCIAL BILL. The Federation can levy taxes, on matters included in the Federal Legislative List.* All proposals for the raising of revenues are embodied in the form of Financial Bills which cannot be introduced or moved except on the recommendation of the Governor General. Such Bills must originate in the Lower House and after having been passed by that House are presented to the Upper Chamber. The remaining procedure governing the passage of such Bills is the same as in the case of other Bills, the Governor General having the same powers as he has with regard to other Bills. Since all financial proposals must secure the recommendation of the Governor-General, private members will have no initiative in the matter. This is in accordance with the established practice of most of the parliamentary governments.

2 CONTROL OVER EXPENDITURE

THE ANNUAL FINANCIAL STATEMENT Every year, the Governor-General is to lay before both Houses of the Federal Legislature an Annual Financial Statement, popularly known as the Budget. It is a statement of the estimated receipts and expenditure of the Federation and is to show separately (1) sums required to meet expenditure which is declared by the Government of India Act, 1935, to be charged on the revenues of the Federation, and (2) sums required to meet other expenditure proposed to be made from the revenues of the Federation.

* The Sources of Federal Revenues are discussed in Chapter VI p 231

**CHARGED
EXPENDITURE.**

The following expenditure is declared to be charged on the revenues of the Federation :—

(1) The salary and allowances of the Governor-General and other expenditure relating to his office.

(2) The salaries, allowances, etc., of the Federal Council of Ministers, Counsellors, the Advocate-General, the Chief Commissioners, the Financial Adviser and his staff, and the Judges of the Federal Court.

(3) Expenditure on Defence, External Affairs, Tribal Areas and Ecclesiastical Affairs.*

(4) Debt charges for which the Federation is liable, including interest, sinking fund charges, etc.

(5) The sums payable to His Majesty in respect of expenses incurred in discharging the functions of the Crown in its relation with Indian States.

(6) Any grants for purposes connected with the administration of "excluded areas" in a province.

(7) Any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal.

(8) Any other expenditure declared by the Government of India Act, 1935 or by any Act of the Federal Legislature to be so charged.

Any question whether any proposed expenditure falls within the class of expenditure *charged* on the revenues of the Federation is to be decided by the Governor-General in his discretion.

DISCUSSION.

The Budget, when presented in the two Houses, may be discussed by them but only that part of it which is not declared charged

* Provided that the sum so charged in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges.

is to be submitted to them in the form of demands for grants to be voted upon by them. The charged expenditure is entirely *non-votable*. Two heads of charged expenditure, namely, the salary and allowances of the Governor-General and other expenditure relating to his office, and the sums payable to His Majesty for expenses incurred in discharging the functions of the Crown in its relation with Indian States, may not even be discussed.

DEMANDS FOR GRANTS. Estimates of expenditure, other than charged, are to be submitted in the form of demands for grants to the Federal Assembly and *thereafter* to the Council of State. No demand for a grant can be made except on the recommendation of the Governor-General. Either Chamber has power to assent or to refuse to assent to any demand, or to assent subject to a particular reduction in the amount demanded—there being no power in their hands to increase any demand. If a demand is refused by the Assembly, it is not to be presented to the Council of State unless the Governor-General so directs; and where the Assembly has reduced a grant, only the demand for such reduced grant is to be submitted to the Council of State. If the two Chambers differ with respect to any demand, the Governor-General shall summon the two Chambers to meet in a joint sitting, and the decision of the majority of the members present and voting shall be the decision of the Chambers.

RESTORATION OF GRANTS. If the Chambers have not assented to any demand for grant, or have assented subject to a reduction in the amount, the Governor-General may restore such grants if in his opinion the

refusal or reduction would affect the due discharge of any of his Special Responsibilities.

SUPPLEMENTARY STATEMENT OF EXPENDITURE. The Governor-General may also cause to be laid before the two Houses any supplementary statement of expenditure, if it becomes necessary in any financial year; and the same provisions which apply to the Annual Financial Statement would apply to it.

3. CONCLUSION

IMPOTENCE OF THE LEGISLATURE. The Federal Legislature will have no initiative in raising revenues. Its power of control over expenditure will be confined only to expenditure which is not charged on the revenues of the Federation. Since the items declared charged would easily cover about three-fourths of the total expenditure, the scope of intervention by the Legislature is considerably restricted. Moreover, the right to vote on demands for grants has been extended to the Council of State. This is not only not in conformity with practice in other democratic countries, where it is regarded as a special privilege of the lower or popular Chamber to control expenditure, but is actually a retrograde step even in the case of India, for, under the existing constitution, only the Legislative Assembly is competent to vote on demand for grants. But, most important of all, even when a demand has been refused or reduced by the Legislature, the Governor-General's powers of restoration are complete. Special Responsibilities, as we have seen, are so generally worded that the Governor-General need not have any difficulty in restoring any grant.

A SERIOUS
LIMITATION

It is not difficult to propesy that the extremely restricted power of the Legislature over expenditure may well prove to be, in practice, the most serious limitation in ensuring a progressive administration and in securing the responsibility of the Executive to the Legislature

C. The Relation of the Federal Executive to the
Federal Legislature

We now come to the control which the Federal Legislature would exercise over the Federal Executive.

THE RESERVED
HALF

The Executive authority of the Federation is to be exercised by the Governor-General partly in his discretion, partly on the advice of his Council of Ministers and partly in his individual judgment. Whenever the Governor-General acts in his discretion or exercises his individual judgment, he is responsible only to the Secretary of State and through him to the British Parliament, the Federal Legislature having absolutely no means of control over him. The only part of administration in which the Legislature can possibly have a determining voice is the sphere in which the Governor-General acts on the advice of his Council of Ministers. Thus a very large field is at once removed from the possibility of control by the Legislature. Departments of Defence, External Affairs, Ecclesiastical Affairs, and Tribal Areas will be administered by the Governor-General in his discretion, similarly, there are a number of other functions too numerous to mention, in which the Governor-General is required to act in his discretion.

GOVERNOR-
GENERAL'S
EXERCISING
INDIVIDUAL
JUDGMENT.

Then again there are matters in which the Governor-General is to exercise his individual judgment; these again are too numerous to mention but the

most important and far-reaching among these are the Special Responsibilities with which the Governor-General has been charged. The wording of these Special Responsibilities is so vague and elastic that the Governor-General may well reduce the status of the Ministers to that of mere advisers, but about that it is difficult to dogmatise, as all would depend upon the growth of healthy conventions. We should, however, notice that there is nothing in the letter of the constitution to compel an unwilling Governor-General to accept Ministerial advice even in the "Transferred" half of the Federal Government.

WILL THE
MINISTERS BE
RESPONSIBLE TO
THE LEGISLATURE?

Acting on the assumption that a certain sphere of administration would be normally under the control of the Ministers, the next

question would be: how far will the Ministers themselves be responsible to the legislature? The Ministers are appointed by the Governor-General, and hold office during his pleasure; he distributes work among them, presides over their meetings and makes rules for the more convenient transaction of the business of government. Legally, there is nothing to show that the Ministers would be responsible to the legislature, except in so far as their salaries are fixed by Act of the Federal Legislature. It may at once be admitted that "Ministerial responsibility is not itself a form of government which can be created or prevented at will by the clauses of a Statute, so

much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government. It follows that a Constitution Act cannot legislate against ministerial responsibility at the Centre, if its other provisions, or the facts of the case, are such as to encourage the development of such responsibility".* Hence, the absence of any direct legal provision for ministerial responsibility to the legislature may not be considered serious † But, at the same time, it must be noted that there is nothing in the Constitution which would give to the Legislature even *indirect* control over the executive. The principle of ministerial responsibility may not be capable of being embodied in a Statute, but in every parliamentary country, the responsibility of the executive to the legislature is secured by several indirect means. For example, the legislature can refuse to pass any laws required by the executive or, can insist on passing certain laws inconvenient to the executive, it can refuse, or reduce the amounts of, certain demands for grants, thereby making it impossible for the executive to carry on, it can reduce the salaries of Ministers or carry a vote of no-confidence against the Ministry. As a rule, it is not necessary for the legislature in democratic countries to express itself so emphatically against the executive, the latter takes the slightest hint of disapproval of the legislature and feels called upon to resign. In India, the Governor-General is armed with full powers to check any undesirable

* J P C Report Vol I p 23

† Thus while responsible government exists in all four Dominions in Canada it rests entirely upon Constitutional Conventions in Australia and South Africa it rests almost entirely on Constitutional Conventions but in the Irish Free State those Conventions with some modifications had been incorporated into the Constitution. Jennings and Young Constitutional Laws of the British Empire p 100

legislation or to secure the passage of laws not sanctioned by the legislature; he can restore any grants refused, or reduced, by the Chambers, thereby enabling the Ministers to carry on. The salary of a Minister cannot be varied during his term of office and whether the legislature will be able to develop the convention of securing the dismissal of Ministers by carrying a vote of censure against them remains to be seen.

ANALOGY OF THE PROVINCES. In the provinces, where powers corresponding to those given to the Governor-General have been given to the Governor, the Ministers have been *completely* responsible to the legislature. It may, therefore, appear that a similar practice would grow at the Centre. There are, however, two additional considerations in the case of the Federal Government which may change the entire position. There is, firstly, the necessity of promoting harmonious relations between the Counsellors and the Ministers, and if the experience of the working of dyarchy in the provinces is to be any guide in this connection, the Ministers may come to regard themselves as mere advisers, and may learn to seek the support of an omnipotent Governor-General. This tendency is likely to be strengthened by the *second* consideration namely, the inclusion of "Representatives" of States in the Council of Ministers. These nominees of the Rulers are only likely to further weaken the position of the progressive element in the Council. It is not, therefore, unlikely, that Ministerial responsibility to the legislature may not take any firm root in the constitution, and the Governor-General may reduce the legislature to a mere debating society.

At the most, *partial responsibility with safeguards* may develop.

In conclusion, the following admirable summary of the whole position, in this regard, may be given in the words of Prof. A. B. Keith, who says, "In the Federal Government also the semblance of responsible government is presented. But the reality is lacking, for the powers in defence and external affairs necessarily, as matters stand, given to the Governor-General limit vitally the scope of ministerial activity, and the measure of representation given to the rulers of Indian States negatives any possibility of even the beginnings of democratic control. It will be a matter of the utmost interest to watch the development of a form of government so unique; certainly, if it operates successfully, the highest credit will be due to the political capacity of Indian leaders, who have infinitely more serious difficulties to face than had the colonial statesmen who evolved the system of self-government which has now culminated in Dominion Status."* (Italics mine.)

IV. Failure of Federal Constitutional Machinery

ISSUE OF
PROCLAMATION.

If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of the Government of India Act, 1935, he may, acting in his discretion, issue a Proclamation and thereby declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion and assume to himself all or any of

* A. B. Keith A Constitutional History of India, Preface

the powers of any Federal body or authority except those of the Federal Court.

DURATION. Such a Proclamation shall be communicated forthwith to the Secretary of State and shall be laid by him before both Houses of Parliament. Such a Proclamation may be revoked or varied by a subsequent Proclamation and shall cease to operate at the expiration of six months; but the two Houses of British Parliament can, by passing resolutions approving the continuance in force of such Proclamation, extend its life, by a period of twelve months at a time, to a maximum period of three years. After that, the Proclamation *shall* cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of the Government of India Act, 1935, subject to any amendments made by Parliament. The language of the Act would give the impression that such a Proclamation might be in force for a little less than three years, and then if it is withdrawn for some time, it may again be in force for another lease of three years, and so on.

**LAWS PASSED
DURING THE
PERIOD.**

If the Governor-General assumes to himself any powers of the Federal Legislature, any laws made by him shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the Federal Legislature.

**CONSTITUTIONAL
SIGNIFICANCE.**

Thus, the Governor-General *acting in his discretion* is the sole judge of the emergency necessitating the suspension of almost

the entire constitutional machinery and of the extent of the powers he may assume to himself. He can continue in the exercise of such powers, with the periodical approval of British Parliament, for not more than three years. It would place the Governor-General in a position of supreme control over the entire legislative and administrative machinery, unfettered by any constitutional trammels

CHAPTER VII.

A CRITICAL ESTIMATE OF THE ALL-INDIA FEDERATION

The All-India Federation, as proposed to be established under the Government of India Act, 1935, has been analysed and discussed in the foregoing pages. It now remains to look at the plan as a whole, and bring out its salient features.

THREE BASIC PRINCIPLES OF FEDERALISM.

The basic principles of a federation, namely, rigid distribution of powers, supremacy of a written and rigid constitution and the establishment of an impartial tribunal are all *in the main* found in the proposed All-India Federation. But, there are several unique features of the scheme, which deserve consideration.

NOT A VOLUNTARY ACT OF INDEPENDENT STATES

1. Federations are, as a rule, formed *voluntarily* by independent or autonomous States desirous of coming together for certain common purposes. In this case, there are no "independent" States, nor is the act of federation "voluntary." The different-provinces in British India have all along remained subject to the control of the Government of India which in turn is responsible to the Crown through the Secretary of State and the British Parliament; they have not been given any option to join the Federation; it is compulsory for them to do so. The Indian Native States,

though given the option to accede to the Federation, cannot be regarded as independent, as they are subject to the rights of Paramountcy vested in the Crown and exercised on his behalf by the Viceroy. So in a sense, British India and the Native States are already under the common political subjection of the British and important matters like Defence, External Affairs etc., are already regulated by a common authority, namely, the Government of India. Moreover, the scheme of Federation has not been framed by the units themselves, on the contrary, their people have had no effective voice in the framing up of its terms which have all been worked out by the British Parliament. There is, therefore, a strong feeling that Federation is being "thrust" on us and India is being denied the right of self-determination. "Sovereignty of the People" which is the basis of the Federal Constitution of the United States of America has, in India, given place to the Supremacy of British Parliament.

PROCESS OF BREAKING-UP

2 The All-India Federation would be an instance of a Unitary State converted into a Federal one, so far at least as British India is concerned. Whereas in the case of other federations, separate States come together and federation serves as a process of uniting them* or bringing them closer, in case of British India it will be a process of breaking up, as the provinces have had to be reconstituted as autonomous units with powers

* It must be admitted that in the Canadian Constitution also "the provinces were created de novo so that it was not a case of the provinces coming together and making a federal arrangement under which they parted with certain of their existing powers it was really a case of the loosening of a Unitary system into a federal one" Bhol Chand. Amending Process of the Indian Constitution. Indian Journal of Political Science July 1940.

over a certain defined sphere guaranteed by the constitution. This is likely to foster centrifugal tendencies and put a premium on provincial and local loyalties, thereby endangering the national solidarity of the country.

**DISPARATE
FEDERAL UNITS.**

3. The units forming the Federation are not well-defined cultural groups with definite affinities of language and tradition but are the product of accidents of military conquest and administrative convenience. The units also differ in size and population in a degree which is unprecedented. In fact, this has led to the surrender of a normal feature of the composition of the Federal Legislature, namely, the equality of status and representation in the Upper Chamber.

**NO COMMON
CITIZENSHIP.**

4. There is no provision for a common citizenship for the people of British India and those of the Federated States. The former are subjects of His Majesty while the latter are subjects of their respective rulers of States; their basic civic rights are not, therefore, the same. The subjects of several Native States do not in practice enjoy even the minimum civic rights and privileges which are considered indispensable in every civilised State in modern times; they are still entirely at the mercy of their rulers many of whom still stick to some form of 'personal' government.

**NO UNIFORMITY
IN THE SCOPE OF
FEDERAL
INTERVENTION.**

5. There is no uniformity in the scope of federal legislation applicable to the different federal units. The powers of the Federation with regard to the different provinces will be the same but

the extent to which federal legislation will apply to Federated States will depend on the terms of the Instrument of Accession of each particular State. Only in those matters which the Ruler has agreed to recognise as Federal subjects will it be possible for the Federal Legislature to legislate for that State. Unless care is taken before-hand and a certain standard of uniformity is enforced by His Majesty, prior to the Instrument of Accession of a State the position may well be chaotic and bewildering, for a federal law applicable to the provinces may be applicable to some States but not to others.

**RESIDUARY
POWERS GIVEN TO
THE GOVERNOR
GENERAL.**

6 Contrary to the practice of other federations where residuary powers are given either to the Federation or to the Provinces the present scheme

gives the power to the Governor-General to decide, in his discretion, whether a particular power, not mentioned in any of the three Legislative Lists, should belong to the Federation or to the Provinces. Though it does not at present appear that this power of the Governor-General will be of any great practical significance as care has been taken to include all possible subjects in one or the other list, the principle of giving residuary powers to the Governor-General is objectionable. It makes the executive authority of the Federation—instead of the Constitution—the supreme power.

**A CONSTITUTIONAL
MISALLIANCE.**

7 The All India Federation is unique in so far as it seeks to bring together units of varying political status and character. The British Indian provinces with semi-democratic insti-

tutions are to be yoked to States most of which are ruled despotically, without any internal constitutional check on the Rulers. Some of them are still organised on patriarchal and feudal lines. This misalliance between "people" rapidly approaching the goal of self-government and the "rulers" accustomed to expect and exact unquestioned loyalty and obedience may well prove a drag on the constitutional development of British India. There is, however, a remote chance of Federation exercising a progressive influence on the backward States which might in course of time come to feel the impact of new ideas. In fact, this "danger" is regarded as real by some rulers whose attitude towards the Federation is, on that account, lukewarm.

**PEOPLE OF THE
STATES NOT
REPRESENTED.**

8. The method by which the federated States are to be "represented" in the Federal Legislature is undemocratic and completely ignores the existence of the *people* of the States. While the representatives of British India are to be elected, those of the States are to be nominated by the Rulers, the people having no legal voice in their selection. These nominees, dependent entirely on the will of the Rulers, may well play the part hitherto played by the nominated members of the Central Legislature. A reactionary group of this nature may even prove to be a rallying point of all conservative elements and may thereby constitute itself into a stumbling block in the way of reformist legislation and the formation of a stable and progressive ministry.

INDIRECT
ELECTIONS AND
COMMUNAL
ELECTORATES

9 The composition of the Federal Assembly leaves much to be desired. Besides the representation of the federated States who will be the nominees of the Rulers, the representatives of British India will be *indirectly* elected on the basis of *separate or communal electorates*. Both these are undoubted evils and will materially detract from the popular and representative character of the Assembly. Separate electorates will perpetuate and extend the scope of communal differences. Indirect Elections will destroy the direct responsibility of a legislator to the people and give rise to an unhealthy growth of cliques among the Provincial Legislators who will elect the members of the Federal Assembly. In other federations, the Lower House is looked upon as representing the people of the Federation, as a whole, and therefore, the elections are direct, while the Upper House is regarded as the custodian of the equality of status of the different federal units, and hence, elections to it are indirect. In India exactly the reverse of this has been adopted.

NO SUBSTANTIAL
TRANSFER OF
POWER

10 The proposed Federation does not transfer any substantial power to the people. The Federal Legislature will not only not be properly constituted but will have very limited powers. Its control over legislation and finance would at every step, be counterbalanced by special powers vested in the Governor-General who can withhold his assent to any legislation he considers undesirable or issue temporary Ordina-

nances or pass Governor-General's Acts without so much as consulting the Legislature; he can restore any grants not sanctioned by the legislature. The power of the purse will not thus be legally vested in the peoples' representatives. In the sphere of administration, one important half of the Federal Government will be entirely 'reserved' and administered by the Governor-General in his discretion; in the other half the Governor-General as to act on the advice of his Ministers unless any of his Special Responsibilities is involved, in which case he exercises his individual judgment. These Special Responsibilities are so wide and all embracing that it would be difficult to assert that any real power would be transferred to the Ministers. Moreover, the development of ministerial responsibility to the legislature also remains to be watched. The control over the Federal Government by the Legislature appears to have been riddled with so many reservations and safeguards in the nature of special powers given to the Governor-General that it appears that the latter will be *effective* head of the Federal Government, with a sum of powers unprecedented in the history of any Constitutional Government.

NO POWER TO
AMEND THE
CONSTITUTION.

Lastly, there is no means whereby the people of this country can, directly or through the legislatures, secure the amendment of any provisions of the constitution. The Government of India Act, 1935, can be amended or altered only by the British Parliament; thus the people of this country, unlike the

people of other federations, have no right to decide the changes that may be necessary for the better government of the country. In every case, it is necessary to move the British Parliament as the Indian legislatures have no "constituent" powers. It must be admitted that the technical position of federations within the British Empire being subordinate to all amendments of the constitution. But, whereas British Parliament is necessary to give legal validity to all amendments of the constitution. But, whereas in case of Canada and Australia, Parliamentary sanction is only a formality and is never withheld, in India it is a reality in as much as the Indian Legislature cannot even *propose* amendments except in certain minor cases specified by the Government of India Act, 1935. These proposals may relate to amendments of:—

(a) the size and composition of the Chambers of the Federal Legislature or the method of choosing or qualifications of members of the Legislature but not so as to vary the proportion between number of seats in the Council of State and the number of seats in the Federal Assembly or the proportion between the number of seats allotted to British India and those allotted to Indian States; or

(b) the number of Chambers in a Provincial Legislature or their size or composition or the method of choosing or the qualifications of members of a Provincial Legislature; or

(c) the electoral qualifications of women, so as to provide for literacy as a qualification for franchise

and secure their names on the electoral roll without application; or

(d) qualifications entitling persons to be registered as voters for the purposes of election.

Thus even the right to propose or recommend amendments is restricted only to the above cases and such recommendations can be made only after the expiration of ten years from the establishment of the Federation or Provincial Autonomy according as the changes relate to the Federal or Provincial Legislature, except changes under (c) which may be recommended at any time. The procedure prescribed for the purpose is that the Federal or Provincial Legislature may by passing a Resolution, on a motion proposed by a minister on behalf of the Council of Ministers, present an address to the Governor-General or the Governor as the case may be, for submission to His Majesty, praying that His Majesty may be pleased to communicate the Resolution to Parliament. The Governor or the Governor-General, while forwarding such Resolution, is to act in his discretion and is required to send a statement of his opinion as to the proposed amendment and, in particular, as to the effect it would have on the interests of any minority together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal or Provincial Legislature support the proposal. The Secretary of State is then required to cause such Resolution together with the

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statement to be laid before Parliament which alone is competent to accept or reject any such amendments *

CONCLUSION

It is clear beyond all doubt that the proposed All-India Federation contains many features which are never found in other federations of the world. Some of these peculiarities may be explained away by reference to the special conditions under which federation is being proposed for this country but many of them cannot be so defended and require drastic modification if India is to be put on the road to *self-government* and unity. As it is, it appears even to a moderate critic as 'a scheme which is a combination of the drawbacks of different systems'† The whole situation may be summed up in the following words of Prof. A. B. Keith —

~ "For the federal scheme it is difficult to feel any satisfaction. The units of which it is composed are too disparate to be joined suitably together, and it is too obvious that on the British side the scheme is favoured in order to provide an element of pure

* The Act authorizes His Majesty to Council to make amendments to the constitution in respect of the cases mentioned above at any time by issuing Orders in Council whether an address by any Indian Legislature has been presented to him or not. In cases where no such address has been submitted to His Majesty the Secretary of State is to ascertain the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the views of any minority likely to be so affected and whether a majority of the representatives of that minority in the Federal or Provincial Legislatures support the proposal. Drafts of such Orders in Council are to be placed before Parliament and the orders may be issued only in pursuance of an address presented to His Majesty by both Houses of Parliament, except in when Parliament is not in session. When such orders may be issued but shall cease to have effect unless approved by Parliament within 28 days of its re-assembly.

† Chintamani and Masani *India's Constitution at Work*, p. 187

conservatism in order to combat any dangerous elements of democracy contributed by British India. On the side of the rulers it is patent that their essential pre-occupation is with the effort to secure immunity from pressure in regard to the improvement of the internal administration of their States . . . It is difficult to deny the justice of the contention in India that federation was largely evoked by the desire to evade the issue of extending responsible government to the Central Government of British India. Moreover, the withholding of defence and external affairs from federal control, inevitable as the course is, renders the alleged concession of responsibility all but meaningless . . . Whether a federation built on incoherent lines can operate successfully is wholly conjectural ; if it does, it will probably be due to the virtual disappearance of responsibility and the assertion of the controlling power of the Governor-General backed by the conservative elements of the States and of British India."*

* A. B. Keith, *A Constitutional History of India*, p. 474.



CHAPTER VIII

THE PROVINCES: THE PROVINCIAL EXECUTIVE

INTRODUCTORY

DIVISIONS OF BRITISH INDIA

British India is at present divided into eleven Governors' provinces and

six Chief Commissioners' provinces. The eleven Governors' Provinces are * Bombay, Madras, Bengal, the United Provinces, the Central Provinces and Berar, the Punjab, Bihar, Orissa, Assam, Sind and the North-West Frontier Province, the six Chief Commissioners' provinces are Delhi, Ajmer-Merwara, Coorg, British Baluchistan, Andaman and Nicobar Islands and Panth Piploda. It will be noticed that Sind and Orissa have been granted separation from Bombay and Bihar respectively and have been constituted into independent Governor's provinces * The North-West Frontier Province has been raised to the status of a Governor's province so that there are no longer any Lieutenant Governors' provinces. Burma, having been separated from India, has now a constitution of its own.

REVISION OF BOUNDARIES

The present division of British India into provinces is not based on either geographical or linguistic or cultural grounds. They represent a "number of administrative areas which have grown almost haphazard as the result of conquest, suppression of former ruler, or administrative

* Their separation provided for by the Government of India Act, 1935 became an established fact from April 1936

convenience." The question of revision of provincial boundaries is, therefore, one of great importance. There has already been agitation for the constitution of Karnatak and Andhra into separate provinces. The Act provides for the creation of a new province, or the alteration of the boundaries of any province, by an Order-in-Council issued by His Majesty, provided that the views of the Federal Legislature and the views of the government and the legislature of the provinces concerned are ascertained beforehand. Recent events have shown that there is no likelihood of any early revision of provincial boundaries.

CHIEF COMMISSIONERS' PROVINCES.

A Chief Commissioner's province is administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him *in his discretion*. In directing and controlling the administration of these provinces the Governor-General is expected to act on the advice of his Ministers except in the case of British Baluchistan where the Governor-General acts in his discretion. Acts of the Federal Legislature apply to Chief Commissioner's provinces, but no Act of the Federal Legislature applies to British Baluchistan unless the Governor-General in his discretion by public notification so directs. The Governor-General in his discretion is further authorised to make regulations for the peace and good government of British Baluchistan. The Governor-General is to act in his discretion if it appears to him that the peace or tranquillity of a Chief Commissioner's province is endangered by any criminal conspiracy for committing any acts of violence intended to overthrow the government and in the matter of

making rules for securing that no record relating to the sources of information about violent crimes intended to overthrow the government shall be disclosed.

CRITICISM.

Only one Chief Commissioner's province namely Coorg has a Legislative Council but even that has no real powers of any kind. Other Chief Commissioners' provinces have not even this semblance or beginning of representative institutions. It is also not quite clear why the Chief Commissioners are made responsible to the Governor-General in his discretion, instead of to the Governor-General and his Council of Ministers.

GOVERNORS' PROVINCES

The present constitution of the Governors' provinces is studied below under three main heads—the Provincial Executive, the Provincial Legislature and the Provincial Constitution at Work. The first is discussed in this Chapter and the other two in Chapters IX and X respectively.

The Provincial Executive

SCOPE OF EXECUTIVE AUTHORITY.

The Executive authority of each Province generally extends to matters with respect to which the Legislature of the Province has power to make laws. This authority is to be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him. *Illustration: by Ex. (2) Imp. Sec. 2 of Govt. of India Act 1919*

1. THE GOVERNOR

APPOINTMENT.

The Governor of a Province is appointed by His Majesty, usually for a period of five years, on the advice of the Secretary of State for India. The Governors of the Dominions are appointed *on the advice of the Dominion Cabinet*.

This privilege is not yet granted to India. Senior European members of the Indian Civil Service are generally selected, though in the case of the three "Presidencies" of Bombay, Bengal and Madras direct recruits are sent from Great Britain. Whether this practice would continue remains to be seen. Popular opinion in this country is generally against Civilian Governors as it is felt that those coming directly from the United Kingdom bring a more liberal and democratic attitude to bear on the discharge of their duties than those who have risen from the ranks in service in this country. The Joint Parliamentary Committee has, however, expressed the view that His Majesty's selections of Governors ought not to be fettered in any way; and that "in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Civil Service who have distinguished themselves in India."* Indians have not yet been given a chance to occupy this exalted office, the only instance, however, was that of the late Lord Sinha who was appointed Governor of Bihar. Temporary officiating chances during leave vacancies have been enjoyed by a few Indians.

SALARIES AND ALLOWANCES.

The salaries and allowances of the Governors are set out in one of the Schedules to the Act of 1935. These are *charged* on Provincial revenues and are not, therefore, subject to the vote of the Legislature. The Governors of Bombay, Madras and Bengal get an annual salary of Rs. 120,000 each; the Governors of the United Provinces, the Punjab and Bihar get Rs. 100,000 each;

* J. P. C. Report, p. 57.

the Governor of Central Provinces and Berar gets Rs 72,000, and the remaining Governors get Rs 66,000 each. Besides salaries, the Governors are entitled to a number of allowances for the maintenance of their dignity and prestige

2 THE COUNCIL OF MINISTERS

SCOPE OF MINISTERIAL ADVICE

Each Governor has a Council of Ministers to aid and advise him in the exercise of his functions, except in so far as he is required by the Act to act in his discretion. Thus at the very outset there is a clear line drawn between those functions in which the Governor is to be aided and advised by the Council of Ministers and those in which the Governor need not consult the Ministers who have no constitutional right to offer advice on those matters. The Governor is, in that sphere, free to act entirely on his own.

NUMBER

Unlike the Federal Council of Ministers where the number is not to exceed ten, there is no restriction as to the number of Ministers

METHOD OF APPOINTMENT

The Governor's Ministers are to be chosen and summoned by him, and are to hold office during his pleasure. In order, however, to ensure that the Governor's choice is limited to those who are, or are likely to be, members of the Provincial Legislature, it is provided that a Minister who for any period of six consecutive months is not a member of the Provincial Legislature, shall, at the expiration of that period, cease to be a Minister. Though the Ministers are appointed by the Governor in his discretion, the Instrument of Instructions

requires him to select "in consultation with the person who, in his judgment, is most likely to command a stable majority in the legislature, those persons (including so far as practicable members of important minority communities) who will best in a position collectively to command the confidence of the legislature." In so acting, the Instrument lays down, "he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers." (*Italics mine.*)

SALARIES AND ALLOWANCES.

The salaries of the Ministers are such as the Provincial Legislature may from time to time determine; provided that the salary of a Minister shall not be varied during his term of office.

COUNCIL OF MINISTERS AND GOVERNMENT.

The Council of Ministers is merely to aid and advise the Governor in all matters, except those in which he is required to act in his discretion. The Council does not, therefore, legally form part of the executive authority of the province. It does not, in the eye of the law, form the "government."* All executive authority is formally vested in the Governor and hence all executive action is expressed to be taken in the name of the Governor.

ABOLITION OF DIARCHY.

The scope of ministerial advice is strictly limited to those functions in which the Governor is not required to act in his discretion; this is a serious limitation as the matters

* This view was upheld by the High Court at Calcutta in two cases which came before it: *Dhirendra Nath Sen v. Emperor* and *Emperor v. Hemendra Prasad Ghose*. Dr. A. B. Rudra of the Dacca University has, however challenged this view in his paper on "The Status of Ministers," *Indian Journal of Political Science*, April 1941.

falling within the discretion of the Governor are numerous and are spread over the different sections of the Government of India Act, 1935. But no definite department, as a whole has been 'reserved' for the administration by the Governor, hence the dyarchical arrangement of the Act of 1919 whereby certain departments were 'Reserved' and others "Transferred" has been done away with. The Ministers are now technically competent to handle all departments but if in any department there are certain matters with respect to which the Governor is to act in his discretion, he may not consult the Ministers

METHOD OF WORK.

With regard to functions within the scope of ministerial influence, the allocation of work or distribution of portfolios among the Ministers is to be done by the Governor in his discretion. He may in his discretion preside at the meetings of the Council of Ministers and make rules for the more convenient transaction of the business of Government. The Governor is, normally, to follow the advice given to him by his Ministers but in several cases he is at liberty to disagree with the Ministers and exercise his own individual judgment. Thus the Governor acts in certain matters in his discretion, in certain others in his individual judgment and in the remaining on the advice of his Ministers

3 GOVERNOR'S SPECIAL RESPONSIBILITIES

Of the matters in which the Governor is required to exercise his individual judgment, the most important are the Special Responsibilities of the Governor. These are —

- (1) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof ;
- (2) the safeguarding of the legitimate interests of minorities;
- (3) the securing of legal and equitable rights and safeguarding the legitimate interests of the Public Services;
- (4) the prevention of discrimination against British subjects domiciled in the United Kingdom or Companies incorporated in that country;
- (5) the securing of the peace and good government of partially excluded areas;
- (6) the protection of the rights of any Indian State and the rights and dignity of any Ruler thereof; and
- (7) the securing of the execution of orders or directions issued by the Governor-General in his discretion.

In addition to these Special Responsibilities which have been saddled on all the Provincial Governors, the Governor of Central Provinces and Berar has been charged with the Special Responsibility of securing that a reasonable share of the revenues of the Province is spent on Berar; and the Governor of Sind has the Special Responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme. Besides, Governors of Provinces in which there are "excluded areas" have the Special Responsibility to see to the proper administration of such areas, and

any Governor who is acting as an agent for the Governor-General has the Special Responsibility to see that no action which is inconsistent with his agency functions is taken.

COMPARISON WITH GOVERNOR GENERAL'S SPECIAL RESPONSIBILITIES There is a close parallel between the Special Responsibilities of the Governors and those of the Governor-General. There are, however, two notable omissions in the Special Responsibilities charged on the Governors. Firstly, "the safeguarding of the financial stability of the Federation" has no counterpart in the Province and hence there is also no provision for a Financial Adviser to the Governor; and secondly, the Governor is not concerned with the prevention of discriminatory treatment of the goods of United Kingdom or Burmese origin, an issue which falls outside the Provincial sphere.

SPECIAL PRECAUTIONS In addition to the Special Responsibility of preventing any grave menace to the peace or tranquillity of the Province or any part thereof, the Governor of each province is provided with *special authority to act in his individual judgment* while making or amending rules which relate to the organisation of civil or military police force. He is also required to *act in his discretion* in any of the following cases —

- (1) if it appears to him that the peace or tranquillity of the province is endangered by any criminal conspiracy for committing violence intended to overthrow the government as by law established, and

- (2) for making rules for securing that no record relating to the sources of information about violent crimes intended to overthrow the government shall be disclosed.

NATURE AND
PURPOSE OF
SPECIAL
RESPONSIBILITIES.

The Special Responsibilities of the Governor, like those of the Governor-General, do not concern any particular department but are couched in such general and vague terms that they may impinge on almost any conceivable question of administration. The *raison d'être* of these is to be found in the anxiety of British Parliament to provide against the possibility of popular ministries showing excessive zeal in certain matters.*

4. THE ADVOCATE-GENERAL

APPOINTMENT.

The Governor of each province is to appoint a person being qualified to be appointed a judge of a High Court to be Advocate-General of the province. He holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor is to exercise his individual judgment.

FUNCTIONS.

The duties of the Advocate-General include the giving of advice to the Provincial Government on such legal matters as may be referred to him. He has a right to speak in, and

* See Chapter V, pp. 106-10.

otherwise take part in the proceedings of, the provincial legislature, though he is not entitled to vote. 2

SIGNIFICANCE The creation of this office is necessitated by the growing complexity of the constitution and the consequent advisability of having at the disposal of the Provincial Government an officer to advise on legal matters and conduct cases on its behalf

CHAPTER IX.

THE PROVINCIAL LEGISLATURE

Each Governor's province is provided with a legislature consisting of His Majesty represented by the Governor, a Legislative Assembly and in six provinces, i.e., those of Bombay, Madras, Bengal, the United Provinces, Bihar and Assam, a Legislative Council. The introduction of Second Chambers in these six provinces is an innovation made by the Government of India Act, 1935.

L. Composition of the Provincial Legislature

1. NUMBER OF SEATS

The Legislative Assembly in each Governor's province and the Legislative Council, wherever it exists, consist of such number of members as is laid down in a schedule prescribed by the Government of India Act, 1935. This number varies from province to province and is roughly proportional to the population of each province. The Assemblies are, however, much larger bodies than the Legislative Councils which were established by the Act of 1919. The new

Second Chambers which have taken over the name of the old *Legislative Councils* are much smaller bodies than the *Legislative Assemblies*. The following table gives the number of seats in each Chamber of the Provincial Legislature.

		Legislative Assembly.	Legislative Council.
Madras	..	215	54 to 56
Bombay	..	175	29 to 30
Bengal	..	250	63 to 65
United Provinces		228	58 to 60
Punjab	..	175	—
Bihar	..	152	29 to 30
C.P. & Berar		112	—
Assam	.	108	21 to 22
N.W.F. Province.		50	—
Orissa	..	60	—
Sind	..	60	—

Thus the largest *Legislative Assembly* is that of Bengal with a membership of 250; while the *Legislative Assembly* of the North-West Frontier Province is the smallest, with only 50 members.

2. DISTRIBUTION OF SEATS

RESERVATION FOR MINORITIES AND INTERESTS The seats in the Legislative Assembly in each province are further assigned to different communities and interests.

Muhammadans, Sikhs, Anglo-Indians, Europeans and Indian Christians have a definite number of seats assigned to them. Seats are also reserved for representatives of Industry and Commerce, Landholders, Universities, labour and women. Of the seats assigned to women, reservations are made for Muhammadan, Sikh, Anglo-Indian and Indian Christian women, thereby introducing the principle of communal representation among them for the first time. Seats not assigned to any community or interest are called General Seats which may be filled by the Hindus, Parsis, Jains and other smaller communities which have not been given any separate seats. Of the General Seats, some are again reserved for the Scheduled Castes. The seats in the Legislative Council are divided among Muhammadans, Europeans and Indian Christians, the remainder being General Seats. There are no reservations here for any special interests as there are in the case of the Legislative Assembly.

The following tables show the distribution of seats among the different communities and interests in the Chambers of the Provincial Legislature.

TABLE OF SEATS
Provincial Legislative Assemblies.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
Province	Total Seats	General Seats		Seats for representatives of backward areas and tribes	Sikh Seats	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of commerce, industry, mining and planting	Landholders Seats	University Seats	Seats for representatives of labour	Seats for Women				
		Total of General Seats	General Seats reserved for Scheduled Castes											General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras	215	146	30	1	1	23	2	1	1	2	1	1	1	1	1	1	1	1
Bombay	175	114	15	1	1	29	1	1	1	1	1	1	1	1	1	1	1	1
Bengal	250	78	30	1	1	137	1	1	1	1	1	1	1	1	1	1	1	1
U. Provinces	228	140	20	1	1	64	1	1	1	1	1	1	1	1	1	1	1	1
Punjab	175	42	8	1	1	84	1	1	1	1	1	1	1	1	1	1	1	1
Bihar	152	86	15	1	1	39	1	1	1	1	1	1	1	1	1	1	1	1
C. P. & Berar	112	84	20	1	1	34	1	1	1	1	1	1	1	1	1	1	1	1
Assam	103	47	7	1	1	24	1	1	1	1	1	1	1	1	1	1	1	1
N. W. Frontier Province	50	9	—	5	3	36	—	—	—	—	—	—	—	—	—	—	—	—
Orissa	60	44	6	1	1	4	1	1	1	1	1	1	1	1	1	1	1	1
Sind	60	18	—	1	1	33	1	1	1	1	1	1	1	1	1	1	1	1

In Bombay seven of the general seats shall be reserved for Marathas
In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar
In Assam and Orissa the seats reserved for women shall be non-communal seats

TABLE OF SEATS
Provincial Legislative Councils.

1 Province.	2 Total of Seats.	3 General Seats.	4 Muhamma- dan Seats	5 European Seats.	6 Indian Christian Seats.	7 Seats to be filled by Legislative Assembly	8 Seats to be filled by Governor.
Madras	{ Not less than 64 Not more than 66 }	{ 35 36 }	7	1	3	—	{ Not less than 8 Not more than 10. }
Bombay	{ Not less than 29 Not more than 30 }	{ 29 30 }	5	1	—	—	{ Not less than 3. Not more than 4. }
Bengal	{ Not less than 63 Not more than 65 }	{ 10 11 }	17	3	—	27	{ Not less than 8. Not more than 9. }
United Provinces	{ Not less than 58 Not more than 60 }	{ 34 35 }	17	1	—	—	{ Not less than 6. Not more than 8. }
Bihar	{ Not less than 29 Not more than 30 }	{ 9 10 }	4	1	—	12	{ Not less than 3. Not more than 4. }
Assam	{ Not less than 21 Not more than 23 }	{ 10 11 }	6	2	—	—	{ Not less than 3. Not more than 4. }

CRITICISM OF
SUCH
RESERVATIONS

The principle of reservation of seats for important minority communities and interests which is embodied in the composition of the provincial legislatures is meant to guarantee a certain number of seats to these communities and interests to enable them to safeguard their position. The proportion which the seats reserved for a minority bear to the total number of seats in the House is greater than the proportion of population of that minority in the province. This is called *weightage* and is expected to secure the position of a minority to some extent. It is, however, remarkable that in provinces like Bengal, Sind, the Punjab and the North-West Frontier where the Muhammdans are by no means in a minority, seats have been reserved for them! It is also surprising that in the provinces of Bengal and the Punjab, the Hindus who are in a minority are not only not granted weightage but have actually less number of seats than what they would be entitled to by their ratio of population. The distribution of seats among the different communities is in accordance with the Communal Award given by the late Mr Ramsay MacDonald, the then Prime Minister of Great Britain *

3 METHOD OF REPRESENTATION

THE LEGISLATIVE
ASSEMBLY

The members of the Legislative Assembly of a province are all to be elected, nominations having been completely given up. The elections are direct and are organised on the basis of Communal Electorates, the Muhammadan, Sikh, European, Anglo-Indian and Indian Christian

* See Chapter VI p 121

voters being entitled to vote separately for candidates contesting seats assigned to each community. This principle has been further extended so as to divide women into communal groups. In the case of the representatives of the Scheduled Castes and the Marathas in Bombay, the principle of Communal Electorates, though originally conceded by the Communal Award, has been modified in accordance with the provisions of the Poona Pact and the procedure in elections to seats reserved for these classes is as follows. There are to be two elections, one primary and the other secondary. At the primary election, only those voters in a constituency who are members of these castes are entitled to take part in the election. But, they must, for every single seat to be filled, elect four candidates who alone will be entitled to stand at the final election in which all voters belonging to the General Constituency can take part. Thus the primary election is intended to ensure that only those persons who enjoy the confidence of their community are allowed to contest the final election.

THE LEGISLATIVE COUNCIL.

In the case of the Legislative Councils, a large majority of members are *elected*, and a small number of members are to be *nominated* by the Governor. The elected members are returned on the basis of communal electorates. In the case of Bengal and Bihar some members are elected to the Legislative Council by the members of the Legislative Assembly. Thus an element of indirect election has been introduced in the composition of the Legislative Councils of these provinces.

4 FRANCHISE

The right to vote¹ at elections to the Provincial Legislature is governed by² the Provisions of the Government of India Act, 1935, and Orders³ in-Council made thereunder. The detailed qualifications² entitling a person to vote vary in the different provinces and are much higher in the case of the Legislative Council than in the case of the Legislative Assembly

THE LEGISLATIVE
ASSEMBLY

For elections to the Legislative Assembly, those who pay income¹ tax or hold land assessed to a minimum land revenue² or pay a minimum house rent³ or possess certain prescribed educational qualifications or pay certain municipal or motor vehicle taxes are entitled to vote. Women possessing any of these qualifications are also entitled to vote. In addition, wives and widows of men qualified for voting, and possessing lower educational qualifications are entitled to vote.

THE LEGISLATIVE
COUNCIL

The right to vote at elections to the Legislative Council is dependent on high property qualifications, payment of heavy income-tax, payment of a large land revenue or rent, enjoyment of titles, past or present membership of legislature, chairmanship of local bodies or co-operative banks and the enjoyment of certain high offices like those of Ministers, Executive Councillors or High Court Judges. Women possessing these qualifications are also entitled to vote. Wives of men who are qualified by virtue of paying income-tax, land revenue etc., are also entitled to vote.

CONCLUSION

It has been calculated that nearly fourteen per cent. of the population, i.e., about thirty-five million persons have secured the right to vote at elections to the Legislative Assembly. Of these about twenty-nine millions are males and six millions are females. The Provincial Electorate before the introduction of the new constitution numbered only about seven million men and women, or nearly three per cent. of the population of British India.

5. TENURE

THE LEGISLATIVE ASSEMBLY

The tenure of the Legislative Assembly is five years and at the expiration of that period the Assembly is automatically dissolved. The Governor in his discretion can dissolve it earlier. He can also prorogue any Session of the Assembly, though he has no power to extend its life beyond the period of five years.

THE LEGISLATIVE COUNCIL

The Legislative Council is a permanent body not subject to dissolution, either at the end of any fixed period or by the Governor. Instead, one-third of the members are to retire every third year by rotation, thus bringing about a complete change in nine years.* The Governor can prorogue any sessions of the House.

6. GENERAL REMARKS

SOME WELCOME FEATURES

The Provincial Legislatures, as constituted under the Act of 1935, are a great advance on those they have replaced. The

* The term of office of a member of the Legislative Council of a Province other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council, the Governor in his discretion shall make provision by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire every third year thereafter.

Legislative Assembly is a much larger body than the old Council and therefore gives a greater opportunity for adequate representation. The abolition of nominations is a step in the right direction and would make the legislatures representative of the people of the province. The extension of franchise makes the legislatures broad based on popular will and though the ideal of Adult Suffrage is yet far off the present extension cannot be regarded as insignificant in a country where illiteracy and ignorance yet remain to be seriously tackled.

SECOND CHAMBERS.

But the composition of the legislatures in the provinces reveals several un-

satisfactory features which may be briefly noticed. First, the introduction of Second Chambers in the six provinces named above has made the legislative procedure in those provinces unnecessarily complicated dilatory and costly. The composition of the Councils also reveals a predominance of landed and aristocratic elements returned on a narrow franchise the are likely to exercise a reactionary influence on political life. The idea of setting up second Chambers in the provinces was fully discussed by the Montford Report which came to the conclusion that "In many provinces it would be impossible to secure a sufficient number of suitable members for two Houses". We apprehend also that a second Chamber representing mainly landed and moneyed interests might prove too effective a barrier against legislation which affected such interests. Again the presence of large landed proprietors in the second Chamber might have the unfortunate result of discouraging other members of the same class from seeking the votes of the electorate.

We think that the delay involved in passing legislation through two Houses would make the system far too cumbrous to contemplate for the business of provincial legislation."*

COMMUNAL ELECTORATES

Secondly, the continuance of Communal Electorates and their further extension to women make the legislature representative not of citizens but of communities and, as has been said already,† their adoption vitiates the whole body politic and only intensifies communal differences and discords and makes the formation of political parties difficult.

ELECTIONS LESS FREQUENT.

Thirdly, the extension of the tenure of the Legislative Assembly to five years, and the formation of the Legislative Council as a permanent body, with one-third of the members retiring every three years, are bound to diminish the popular influence over the legislature, thereby rendering the latter less responsible than it would have been in case of frequent elections. In India where the need for political education of the masses is paramount, administrative inconvenience of frequent elections should not be allowed to be the deciding factor.

II. Procedure in the Provincial Legislature.

1. SUMMONS, MEETINGS AND PROCEDURE

GOVERNOR'S POWERS

The Governor may in his discretion *summon* either Chamber to meet at such time and place as he deems fit. It is, however,

* Montagu Chelmsford Report, pp. 166-7.

† See Chapter III, pp. 57-59

obligatory on him to summon the Provincial Legislature at least once every year so that twelve months shall not intervene between the last sitting in one session and the first sitting in the next session. The Governor, acting in his discretion may prorogue either Chamber or dissolve the Legislative Assembly, the Legislative Council being a permanent body is not subject to dissolution

2 OFFICERS OF CHAMBERS

APPOINTMENT SALARY AND REMOVAL

The Legislative Assembly has a Speaker, and in his absence a Deputy-Speaker, to preside over its meetings. Similarly, the Legislative Council has a President and a Deputy-President. They are all chosen by the respective Chambers from among their own members, and are entitled to such salaries as may be fixed by Act of the Provincial Legislature. Any of them may be removed by a resolution of the Chamber passed by a majority of all the then members of the Chamber, provided that at least fourteen days' notice is given of the intention to move the resolution.

RIGHTS AND PRIVILEGES

The Speaker, or the President, or a person acting as such, has no vote in the first instance but has a casting vote in case of equality of votes on any issue before the House. No officer, or other members acting as such, shall be subject to the jurisdiction of any Court in respect of the exercise by him of the powers of regulating procedure, or conduct of business, or for maintaining order *.

* For functions and powers of these officers see Chapter III p. 60

✓ 3. OATH

Members of either Chamber must, before taking their seats, make an oath of allegiance or a solemn affirmation of their loyalty to His Majesty, the King Emperor of India his heirs and successors.

4. QUORUM

The minimum number of members required for the carrying on of business is fixed at one-sixth of the total number of members in case of the Legislative Assembly, and at ten in the case of the Legislative Council. In the absence of this requisite number, it is the duty of the Speaker or the President, as the case may be, to adjourn the Chamber, or to suspend the meeting until there is a quorum.

5. DISQUALIFICATIONS

A person is disqualified for being chosen a member of the Provincial Legislature if

- (1) he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder; or
- (2) he is of unsound mind and stands so declared by a competent Court; or
- (3) he is an undischarged insolvent; or
- (4) he has been convicted and found guilty of corrupt or illegal practices in elections; or
- (5) he has been convicted of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years or such less period as

the Governor acting in his discretion may allow in any particular case, has elapsed since his release, or

- (6) as a candidate, or the agent of a candidate, for a seat in any legislature, he has failed to lodge a return of election expenses within the prescribed time unless five years have elapsed or the Governor acting in his discretion has removed the disqualification, or
- (7) he is serving a sentence of transportation or of imprisonment for a criminal offence

If any of these disqualifications is incurred by a person after his election, he ceases to be the member of the Legislature

MEMBERSHIP OF TWO CHAMBERS OR LEGISLATURES

No person can be a member of both Chambers of a Provincial Legislature, or a member both of the Federal and of a Provincial Legislature. The Governor in his individual judgment is to make rules in the case of the former, and in the case of the latter, the person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature

LONG ABSENCE

If for sixty days a member of either Chamber is, without permission of the Chamber, absent from all its meetings, the Chamber may declare his seat vacant

PENALTY FOR SITTING WHEN NOT ENTITLED

If a person sits or votes as a member, of either Chamber when he is not qualified, or is disqualified, for its membership he shall be liable in respect of each

day on which he so sits or votes to a penalty of five hundred rupees.

6 SALARIES AND ALLOWANCES

Members of the Provincial Legislature are entitled to receive such salaries and allowances as may, from time to time, be determined by Act of the Provincial Legislature.

7. PRIVILEGES OF MEMBERS

FREEDOM OF SPEECH

Subject to the provision of the Government of India Act, 1935, and to rules and standing orders regulating the procedure of the Provincial Legislature, the members have freedom of speech in the legislature and are not liable to any proceedings in any Court in respect of anything said or vote given in the legislature or a committee thereof. No person is liable in respect of any publication authorised by either Chamber of the Legislature of any report, paper, vote or proceedings

RESTRICTIONS ON FREEDOM OF SPEECH.

The following restrictions on the freedom of speech are laid down in the Act of 1935.

1. No discussion shall take place in the Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court of a province or of a Federated State, in the discharge of his duties.

2. If the Governor in his discretion certifies that the discussion of a Bill or clause or amendment introduced, or proposed to be moved, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace and tranquillity of the province or any part thereof, he can direct that no

proceedings shall be taken in relation to that Bill, clause or amendment, as the case may be

The other restrictions are such as may be contained in the rules of procedure of the Chambers

8 RULES OF PROCEDURE

GOVERNOR'S POWERS

Each Chamber is to make rules for regulating its procedure and conduct of business but the Governor in his discretion after consultation with the President or the Speaker, as the case may be, is to make rules for the following purposes —

(a) for regulating the procedure in relation to any matter which affects the discharge of his functions with respect to which he is required to act in his discretion, or to exercise his individual judgment,

(b) for securing the timely completion of financial business,

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any State unless it affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province,

(d) for prohibiting, save with the consent of the Governor in his discretion, the discussion of or the asking of question on, any matters connected with

(i) relations between His Majesty or the Governor-General and any foreign State or province, or

(ii) the tribal areas, or

(iii) the administration of any excluded area, or

- (iv) the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof.

**ENGLISH
LANGUAGE TO BE
USED.**

All proceedings in the Legislature of a Province are conducted in the English language, but the rules of procedure of the Chambers provide for enabling persons unacquainted, or not sufficiently acquainted with the English language to use another language.

The validity of any proceedings in the Provincial Legislature cannot be called in question on the ground of any alleged irregularity of procedure.

**9. RIGHT OF GOVERNOR TO ADDRESS AND SEND
MESSAGES TO CHAMBERS**

The Governor may, in his discretion, address either Chamber of the Provincial Legislature or both Chambers assembled together and may, for that purpose, require the attendance of members. He may also send messages to either Chamber, and a Chamber to whom any such message is sent shall, with all convenient dispatch, consider any matter which they are required by the message to take into consideration.

**10. RIGHT OF MINISTERS AND ADVOCATE-GENERAL
AS RESPECTS CHAMBERS**

Every Minister and the Advocate-General have the right to speak in, and otherwise take part in the proceedings of, both Houses of the legislature or any of their committees of which they may be members. The Advocate-General has, however, no right to vote and the Ministers have right to vote only in that Chamber of which they are regular members.

III. Functions and Powers of the Provincial Legislature

DISTRIBUTION OF LEGISLATIVE POWERS The functions and powers of the Provincial Legislatures are clearly laid down in the Government of India Act, 1935. They are no longer derived from the Central Government. In accordance with the federal principles a rigid line is drawn between matters on which the Provincial Legislatures are competent to legislate and matters on which the Federal Legislature can pass laws. Each of them is to keep within the limits prescribed by that Act, and any federal intervention in provincial matters or provincial trespass, on the federal sphere would be declared *ultra vires* by the Federal Court whose duty it is to be the interpreter and guardian of the constitution.

The powers of the legislature may be studied under three main headings—Legislative Powers, Financial Powers and Relation of the Executive to the Legislature.

A. Legislative Powers ✓

1 SCOPE OF LEGISLATION

PROVINCIAL LAWS The distribution of powers between the Federation and the Provinces has been discussed fully in Chapter IV. In accordance with that scheme, the Provincial Legislature is competent to legislate on —

(a) all matters included in the Provincial Legislative List; here its authority is normally exclusive, the Federal Legislature having no right to legislate.

but the Federal Legislature may pass laws on such matters

- (i) if authorised by resolutions passed by Chambers of two or more provinces praying for such legislation and then subject to amendments in those provinces;
- (ii) if the Governor-General so authorises the Federal Legislature by issuing a Proclamation of Emergency and then subject to the previous sanction of the Governor-General;

(b) all matters included in the Concurrent Legislative List; but since the Federal legislature is also competent to make laws on such matters, there may be conflict between a Federal and Provincial law. In that case, the Federal law prevails and the Provincial Law becomes null and void to the extent to which it is repugnant to the Federal law. But when a conflicting Provincial Law, having been reserved for the signification of His Majesty, or assent of the Governor-General, receives that, it prevails over the Federal law in that particular province.

It has no right to legislate on matters included in the Federal Legislative List.

THREE LIMITATIONS ON LAW-MAKING POWERS.

The Provincial Legislature is further restricted in its scope of legislative powers in three ways,* cor-

responding exactly to the limitation on the Federal Legislature, relating to :—

* For a full discussion of these, see Chapter VI.

- (i) Its character as a non-sovereign law-making body,
- (ii) Provisions with respect to discrimination,
- (iii) Stoppage of discussions by the Governor

2 LEGISLATIVE PROCEDURE

The rules of legislature procedure in the Provincial Legislature are settled by the Chambers themselves and therefore vary from province to province. The following basic principles are, however, laid down by the Act of 1935

PREVIOUS SANCTION OF THE GOVERNOR- GENERAL

No Bill or amendment affecting any of the matters mentioned below can be moved in a Provincial legislature without the previous sanction of the Governor-General. Any Bills or amendments affecting

- (a) any Act of Parliament extending to British India, or
- (b) any Governor-General's Act or Ordinance issued by him in his discretion, or
- (c) any matter in which the Governor-General is required to act in his discretion or to exercise his individual judgment, or
- (d) the procedure for criminal proceedings in which European British subjects are concerned

PREVIOUS SANCTION OF THE GOVERNOR

The previous sanction of the Governor is required for the introduction of Bills or Amendments affecting

- (a) any Governor's Act or Ordinance promulgated by him in his discretion, or

(b) any Act relating to any Police force.

BROAD
PRINCIPLES
OF PROCEDURE.

A Bill, other than a Financial Bill, may originate in either Chamber. A Financial Bill must be introduced in the Legislative Assembly. A Bill becomes an Act if it is passed by the Legislative Assembly, or by both houses of the legislature if there are two Chambers, and is assented to by the Governor-General. A Bill is deemed to have been passed by the two Chambers of the legislature when it is agreed to by both Chambers either without amendment or with such amendments as are agreed to by both Chambers.

DISAGREEMENT
BETWEEN THE
CHAMBERS.

If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not within twelve months presented to the Governor for his assent, the Governor may in his discretion summon the Chambers to meet in a joint sitting. He can convene such a joint sitting even before the period of twelve months has elapsed, if it appears to him that the Bill relates to finance or affects the discharge of any of his special responsibilities. At such a joint sitting, the President of the Legislative Council takes the chair. If at the joint sitting, the Bill is passed, with such amendments as are agreed to by a majority of the total number of members of both Chambers present and voting, it is considered to have been passed by both Chambers in that form.

3. LEGISLATIVE POWERS OF THE GOVERNOR

FOUR
ALTERNATIVES.

When a Bill is passed by the Legislative Assembly, or by both Chambers if there is also a Legislative Council, it is

presented to the Governor for his assent. He may, in his discretion, do any of the following :—

- (i) he may assent in His Majesty's name to the Bill in which case the Bill becomes an Act; or
- (ii) he may withhold assent in which case the Bill lapses, or
- (iii) he may return the Bill to the Chamber or Chambers with a message requesting that they will reconsider the Bill, or some of the provisions, and will, in particular, consider the desirability of introducing any such amendments as he may recommend, in his case, the Chambers shall reconsider the Bill accordingly and present it again for the assent of the Governor; or
- (iv) he may reserve the Bill for the consideration of the Governor-General who, again, may either assent, withhold his assent or return the Bill to the Chambers or reserve it for the signification of His Majesty's pleasure thereon. A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless, within twelve months of its presentation to the Governor, the assent of His Majesty is publicly notified.

DISALLOWANCE
BY HIS MAJESTY

Any Act assented to by the Governor, or the Governor-General, may be disallowed by His Majesty within twelve months of the assent of the Governor or the Governor-General, as the case may be

**POWERS
TO CHECK THE
LEGISLATURES.**

The Governor and the Governor-General are thus armed with all powers to check the introduction or

passage of any laws which they consider inconvenient or undesirable. And any Act duly assented to by either of them may be set aside by His Majesty. The authority of the Chambers is, therefore, distinctly limited and may be completely negated by the exercise of powers by the Governor, the Governor-General and His Majesty.

**GOVERNOR'S
POWERS OF
SECURING
NECESSARY
LEGISLATION.**

The Governor in the province, like the Governor-General at the Centre, has also been empowered to enact legislation of a temporary, or per-

manent character, on his own authority, without obtaining the necessary approval of the legislature. He may, like the Governor-General, issue Ordinances when the legislature is not in session, or he may issue Ordinances at any time with respect to certain subjects, or he may enact permanent laws in the shape of Governor's Acts.

(a) ORDINANCES DURING THE RECESS OF THE LEGISLATURE

TIME AND MANNER OF ISSUE If at any time, when the Provincial Legislature is not in session, the

Governor considers it necessary to take immediate action he may promulgate an Ordinance. He is expected to issue such ordinances on the advice of his Ministers, but to that there are two exceptions.

1. If the Ordinance relates to any subject which would have required his or the Governor-General's previous sanction if it had been introduced in a Bill he shall exercise his *individual judgment*.

2 If he would have been required to reserve a Bill containing the same provisions for the consideration of the Governor-General or if a Bill containing these provisions would have required the Governor-General's previous sanction, he shall not issue it without *instructions from the Governor General*

DURATION

Such an Ordinance has the force and effect of an Act of the Provincial Legislature and is to be laid before the Provincial Legislature. It automatically ceases to operate at the expiration of six weeks from the reassembly of the legislature, or even before the expiration of that period if a resolution disapproving it is passed by the Legislative Assembly and is agreed to by the Legislative Council, if any. It may also be disallowed by His Majesty, or may be withdrawn at any time by the Governor*.

(b) ORDINANCES ISSUED AT ANY TIME WITH RESPECT TO CERTAIN SUBJECTS*

TIME AND MANNER OF ISSUE

If at any time, that is, even when the Provincial Legislature may be in session, the Governor is satisfied that *for the discharge of his functions in so far as he is required to act in his discretion or to exercise his individual judgment*, immediate action is necessary, he may in his discretion, promulgate an Ordinance—

DURATION

Such an Ordinance has the same force as an Act of the Provincial Legislature and continues in operation for any period, not exceeding six months, as may be prescribed in the ordinance. The Governor can, by issuing a subsequent ordinance, extend the

* For the constitutional significance of such ordinances, see Chapter VI.

original ordinance for a further period of six months. It may be disallowed by His Majesty or withdrawn at any time by the Governor.

RESTRICTIONS ON THE GOVERNOR. The Governor is not normally to issue such ordinances without securing the concurrence of the Governor-General; but if it appears to the Governor that it is impracticable to obtain such concurrence in time, he may do without it, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance. Any ordinance extending a previous ordinance for a further period is to be communicated through the Governor-General to the Secretary of State and is to be laid before each House of Parliament.

(c) GOVERNOR'S ACTS

WHEN AND HOW ENACTED. It at any time, that is even when the Provincial Legislature is in session, it appears to the Governor that *for the purpose of enabling him to discharge his functions in so far as he is required to act in his discretion or to exercise his individual judgment*, it is necessary to secure legislation, he may, *in his discretion* by message to the Provincial Legislature, explain the circumstances necessitating such legislation and either *enact forthwith* a Governor's Act or attach to his message the draft of the Bill which he may convert into such Act after the expiration of one month with such amendments as he may deem necessary. Before doing so, he shall consider any address which may have been presented to him in that connection by any Chamber within that period of one month.

DURATION A Governor's Act has the same force and effect as an Act of the Provincial Legislature. It is law not for any limited period but permanently.

RESTRICTIONS ON THE GOVERNOR In enacting such Act, the Governor is to exercise his discretion but must secure the concurrence of the Governor-General. Every Governor's Act is to be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.

4. CONCLUSION

The Provincial Legislatures have thus strictly limited powers of law-making. The Governor can, by withholding previous sanction where that may be required, by stopping discussion in the legislature, by withholding assent from any Bill, or reserving it for the pleasure of the Governor-General, or returning it to the Legislature for reconsideration, put a complete brake on the activities of the legislature. The Governor-General can also, by withholding previous sanction, or withholding assent to a Bill when it is reserved for his consideration by the Governor, hamper the activities of the legislature. Again, a Bill assented to by the Governor, or by the Governor-General, may be disallowed by His Majesty. On the other hand, the Governor can secure any temporary or permanent legislation without consulting his Ministers or the legislature. His omnipotence in the legislative sphere is, therefore, as complete, as a constitution can make it. It is difficult to conceive of a greater array of powers with which the head of the

executive could possibly be entrusted. As it is, he can do anything he likes and undo anything that the legislature may be desirous of doing. The Governor, the Governor-General and His Majesty have all constitutional powers to defeat the purposes of the legislature.

B. Financial Powers

The Provincial Legislature has powers relating to the *raising and spending* of the revenues of the province.

1. RAISING REVENUES

FINANCIAL BILLS. The Provinces can levy taxes on matters included in the Provincial Legislative List. All proposals for the raising of revenues are embodied in the form of Financial Bills which cannot be introduced or moved except on the recommendation of the Governor. Such Bills must originate in the Legislative Assembly and after having been passed by that House are presented to the Legislative Council, if any, in accordance with the rules of procedure relating to ordinary Bills. The Governor has the same rights and powers as regards Financial Bills as he has in the case of other Bills. However, since all financial proposals must secure the recommendation of the Governor, private members have no initiative in the matter, and only members of the party in power—usually the Finance Minister—would have the right of proposing taxation.

2. CONTROL OVER EXPENDITURE

THE ANNUAL
FINANCIAL
STATEMENT.

Every year, the Governor is to lay before the Legislature an Annual Financial Statement, being a state-

ment of the estimated receipts and expenditure of the province and is to show separately (i) sums required to meet expenditure which is declared by the Government of India Act, 1935, to be charged on the revenues of the province, and (2) sums required to meet other expenditure proposed to be incurred from the revenues of the province.

CHARGED
EXPENDITURE

The following expenditure is declared to be charged on Provincial

revenues :

- (1) The salary and allowance of the Governor and other expenditure relating to his office.
- (2) The salaries and allowances of Ministers, Judges of the High Court and the Advocate-General.
- (3) Debt charges for which the province is liable including interest and sinking fund charges.
- (4) Expenditure connected with the administration of "excluded areas."
- (5) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.
- (6) Any other expenditure declared by the Government of India Act, 1935, or by any Act of the Provincial Legislature, to be so charged.

Any question whether any proposed expenditure falls within a class of expenditure charged on the

revenues of the province is decided by the Governor in his discretion.

DISCUSSION AND
VOTING ON
DEMANDS.

The Budget, as the annual financial statement is popularly called, when presented in the Provincial Legislature may be discussed by the Chamber or Chambers as the case may be. Only such of the expenditure as is not declared to be charged is to be submitted in the form of demands for grants to be voted upon by the Legislative Assembly. The Upper Chamber, wherever it exists, has no power to vote on such demands for grants. The charged expenditure is entirely non-votable and one of the items of expenditure declared to be charged, namely, the salary and allowances of the Governor and other expenditure relating to his office, cannot even be discussed.

POWERS OF THE
LEGISLATIVE
ASSEMBLY.

No demand for a grant can be made except on the recommendation of the Governor. The Legislative Assembly has, however, the power to assent or to refuse to assent to any demand, or to assent subject to a particular reduction in the amount demanded--there being no power in the hands of its members to increase any demand.

RESTORATION OF
GRANTS.

If the Legislative Assembly has not assented to any demand for grant or has assented subject to a reduction in the amount, the Governor may restore such grant if, in his opinion, the refusal or reduction would affect the due discharge of any of his special responsibilities.

**SUPPLEMENTARY
STATEMENT OF
EXPENDITURE**

The Governor may also lay before the legislature a supplementary statement of expenditure, if it becomes necessary in any financial year, and the same provisions which apply to the Annual Financial statement would apply to it

3 CONCLUSION

The financial powers of the Provincial Legislature are, like its legislative powers, circumscribed within narrow bounds the Governor having all possible powers both with regard to raising and spending of revenues. The legislature has no initiative in raising revenue and is denied any control over that part of the expenditure which is declared *charged* on the revenues of the province. The charged expenditure covers about three fourths of the total revenues of the province, and the scope of intervention by the legislature is thus considerably restricted. But even in that sphere the Legislative Assembly is not all in all. A grant refused or reduced by it may be restored by the Governor if, in his opinion, such refusal or reduction would affect the due discharge of any of his Special Responsibilities. This is a power which is capable of justifying almost any restoration which the Governor decides upon, thereby reducing the legislature to a position of utter helplessness.

✓ C Relation of the Provincial Executive to the Provincial Legislature

**THE PROVINCIAL
EXECUTIVE**

The executive authority of each province is vested in the Governor, the Council of Ministers being there merely to 'aid and advise' him in the discharge of his functions other

than those in which he is required to act in his discretion. The Ministers have thus no *locus standi* and do not in the strictly legal sense constitute the "Government."

**SPHERE OF
CONTROL BY THE
LEGISLATURE.**

The Governor being appointed by His Majesty, and being subordinate to the Governor-General and the Secretary of State, is in no way responsible to the legislature. Hence, in so far as the administration of the province is carried on by the Governor acting in his discretion, or exercising his individual judgment, there could be no question of the responsibility of the executive to the legislature. Only in so far as the Governor acts on the advice of his Ministers is it possible at all for the legislature to control the actions of the Executive, by holding the Ministers responsible to itself.

**ABOLITION OF
DYARCHY.**

As shown already, the sphere of administration, in which the Governor acts in his discretion, or exercises his individual judgment, is not clearly marked out from the sphere in which he acts on the advice of his Ministers. This has, at once, two results. *Firstly*, it makes his powers of interference in the administration as large as he may interpret them to be, thereby denying any real power to his Ministers. *Secondly*, it makes the Ministers legally competent to handle all departments, there being no subjects or departments wholly reserved for administration by the Governor in his discretion. Thus the old distinction between "Reserved" and "Transferred" subjects is done away with. The provincial executive is no longer dyarchical; it is unitary.

✓ MINISTERIAL RESPONSIBILITY

In so far as the Governor refrains from interfering with the work of the Ministers, the latter have effective control over the administration. But how far are the Ministers responsible to the legislature? The Ministers are appointed by the Governor, and hold office during his pleasure, he distributes work among them, presides over their meetings and makes rules for the more convenient transactions of business of government. Thus, legally, there is nothing to show that the Ministers would be responsible to the legislature. There is, however, one provision which is significant in this respect, namely, that the salaries of Ministers are fixed by Act of the Provincial Legislature. But, this by itself would not legally secure ministerial responsibility for, once the salary of a Minister is fixed, it cannot be altered during his term of office. Moreover, the vast legislative and financial powers vested in the Governor would deprive the legislature of any indirect control over the Ministers who may look for assistance to the Governor.

✓ LI TER AND SPIRIT OF THE CONSTITUTION

The impression left by the perusal of the provisions of the Government of India Act, 1935, is that the provincial legislatures are almost utterly powerless in every sphere. Their legislative and financial powers are so effectively crushed that it may not be surprising if they are reduced to mere debating societies.

The Governor may carry on almost the whole of administration in his discretion or in his individual judgment, and may, if necessary, even secure the responsibility of the Ministers to himself. The towering position of the Governor stands out, therefore, in

bold contrast with the puny insignificance of the legislature. But, these impressions must be revised in the light of the working of the Provincial constitution since April 1937. Any conclusion based only on the letter of the law, without regard to the spirit in which it is being enforced, would be misleading.

CHAPTER X.

THE PROVINCIAL CONSTITUTION AT WORK

1 INTRODUCTORY

CONSTITUTIONAL DEADLOCK. The provincial part of the new constitution came into operation on 1st April, 1937. A few week before that date, elections for the constitution of the new legislatures were held in all Governors' provinces. On the results of those elections, the Governor in each province, acting in accordance with the Instrument of Instructions, sent for the leader of the party which had secured a majority of the seats in the legislature, or was the largest single party therein.* In four provinces, namely, Bengal, the Punjab Assam and Sind, the leaders accepted the invitation and the Governors had, therefore, no difficulty in forming Ministries which enjoyed the confidence of the respective legislatures. But, in the remaining provinces, where the candidates put up by the Indian National Congress had secured a majority of seats, the leaders, acting on the instructions received from the Congress Working Committee, refused to accept office unless the Governors gave an assurance that they would not, in practice, exercise any of the numerous powers given to them by the Act, of acting in discretion or exercising

* The Governor of the North West Frontier Province instead of calling the leader of the Congress party which was the largest party in the legislature summoned the leader of another party who accepted the invitation and was able to form a ministry

individual judgment. Thus, the Governors were asked, on threat of non-acceptance of office, to surrender all special and over-riding powers given to them by the constitution and to agree to carry on the entire administration of the province in accordance with the advice tendered to them constitutionally by their Ministers. The Governors, while assuring the leaders of their good will and sympathy, considered it impracticable, for constitutional reasons, to divest themselves of the responsibilities and duties which had been placed upon them by Parliament. They were, therefore, unable to give such assurances, and argued that it was not within their power to give any such guarantee, as it would amount to a direct breach of legal duties imposed on them.

INTERIM MINISTRIES.

The Governors were, therefore, compelled to look elsewhere for the formation of Ministries in the "Congress" provinces. A Council of Ministers consisting of the leaders of minority parties and groups in the legislature was formed by each Governor in these provinces, but since these did not enjoy the collective confidence of the legislature, their existence could not but be regarded as purely temporary. They came to be known, therefore, as "Interim Ministries," though their members were Ministers in every sense, there being no such thing as an "interim" Minister recognised by the Act.) These interim Ministries continued in office until July 1937 when the Congress parties in the legislatures agreed to accept offices. The real working of the new constitution in the provinces can be said to have begun only then.

A NEW ERA.

From July 1937, India marched ahead with the new constitution working in all the provinces. Though the Congress had failed to secure any formal undertaking about the non-exercise of special powers vested in the Governors, the controversy had done much to clear the point that the Governors would not exercise these powers from day to day, but would consider these as reserve powers to be used on exceptional occasions. The spirit in which the provincial constitution came to be worked was, therefore, a welcome surprise to the very critics of the constitution.

2 THE PROVINCIAL EXECUTIVE

APPOINTMENT OF
MINISTERS

The Governors appointed the Ministers not in *their discretion* but on the advice of the leader of the party which commanded a majority of seats in the legislature. Nowhere did the Governor attempt to make any changes in the names of Ministers submitted by the leaders. In practice, the Ministers, therefore, came to be the nominees, not of the Governor, but of the party in power.

EMERGENCE OF
PRIME MINISTER.

The leader of the majority party naturally assumed a prominent position. He came to be known as the Chief Minister or Prime Minister, though the Act did not contemplate any such provision. As the leader of his party in the Legislature, and head of his colleagues in the Cabinet he came to acquire a position of distinct superiority. In voting salaries of Ministers some legislatures recognised his superior position by fixing a higher salary for him.

JOINT
RESPONSIBILITY.

In the composition of the Ministries, the principle of Joint Responsibility seems to have been borne in mind in all the provinces. The Congress Ministries were the most pronounced in their adherence to this principle, and admitted only those members into the Ministerial fold, who undertook to accept allegiance to the Congress party and to carry out its directions. ✓ The other Ministries could not be so homogenous and had to admit members of different parties, thereby forming coalitions. ✓

REPRESENTATION
OF MINORITIES.

The Instrument of Instructions requires the Governor to include "so far as practicable members of important minority communities." This was interpreted by some to mean that it was the duty of the Governor to include in his Ministry representatives of each important community. Any insistence on such interpretation would have caused a serious difficulty in securing the principle of joint responsibility which was equally stressed upon by the Instrument of Instructions. Fortunately, the Governors did not think fit to insist on the inclusion of such representatives, with the result that the principles of joint responsibility was developed and the smooth working of the government was ensured.

TENURE OF
MINISTERS.

The Ministers are to hold office during the pleasure of the Governor; but in practice, the tenure of the Ministers has come to depend upon the confidence reposed in them by the legislature. No Ministry has been retained after it has lost the confidence of the legislature, and no Ministry has been dismissed unless the legislature has directly or indirectly declared its want of confidence

in the Ministers *) The responsibility of the Ministers to the legislature has, therefore, been complete † Even snap votes on demands for grants, when they went against an existing Ministry, were interpreted by the Governors as indicating lack of confidence in the executive ‡)

DISTRIBUTION OF WORK & MEETINGS The Governors have left the allocation of work and the assignment of portfolios among the Ministers to be settled among themselves. The Governors have, however, exercised their right of presiding over the Councils of Ministers, and have not followed the practice of His Majesty who normally absents himself from all business meetings of his Council. This has, however, led to the institution of "informal meetings" of the Ministers, where the Prime Minister presides, and matters of policy are already decided upon, so that in formal meetings the Ministers speak with a united voice before the Governor.

PARLIAMENTARY SECRETARIES The absence of any legal restriction on the number of Ministers has enabled the Provincial Ministries to appoint Parliamentary secretaries to the Ministers. Their position is that of assistants to the Ministers whom they relieve

* In the Central Provinces in July 1933 the Governor acting on the advice of his Prime Minister, called for the resignation of some of his ministers with whom the Prime Minister had differences and on their failure to do so was obliged to dismiss them from office. The Prime Minister thereupon formed a new ministry but soon lost the confidence of the legislature and resigned. One of the dismissed ministers was then called upon to form a new Ministry.

† An exception to this rule was the first cabinet in Assam which had by August 1937 been defeated in the legislature no less than eight times and still did not feel called upon to resign. Chintamani and Masani India's Constitution at Work p. 55

‡ The fall of Allah Bakh Ministry in Sind in 1940 were brought about by the fall of the Ghulam Hussain Ministry in Sind in 1938 and the fall of Allah Bakh Ministry in Sind in 1940 were brought about by such means.

of some administrative work and whom they sometimes represent in the legislature. Their position is analogous to that of Parliamentary Under-Secretaries in England. They are allowed lower salaries than the Ministers, and their office is regarded as a stepping stone to a Ministership, for it offers them a training ground where they can pick up valuable experience, both legislative and administrative, which will stand them in good stead when they assume independent control of departments. The Parliamentary Secretaries are all selected from the members of the party in power, so that, they go out of office with every change in the Ministry.

**GOVERNORS AS
MERE CONSTITUTIONAL HEADS.**

The Governors did not, so far as could be known, exercise any of their powers in their discretion or in their individual judgment. The Ministers have, everywhere, paid a striking tribute to the constitutional sense which the Governors have brought to bear on the administration. They have been complimented on "having played the game." The executive authority of the provinces has, therefore, been fully exercised by the Ministers.*

* In fact a section of opinion has gone to the length of blaming the Governors for not having interfered so as to secure the discharge of their Special Responsibility of "Safeguarding the legitimate rights of the minorities." The Governors who alone can silence such charges, by denying the existence of the necessity of their interference, are not in a position to speak out their minds. Sir Harry Hailg, who was Governor of the United Provinces while the Congress party enjoyed office, said in a paper read before the East India Association on April 26, 1940: "In dealing with questions raising communal issues the Ministers, in my judgment, normally acted with impartiality and a desire to do what was fair. Indeed, towards the end of the time they were being seriously criticized by the Hindu Mahasabha on the ground that they were not being fair to the Hindus, though in fact there was no justification for such a criticism." *The Asiatic Review*, July, 1940.

3 THE PROVINCIAL LEGISLATURE

LEGISLATION NOT RESTRICTED The Provincial Legislatures have in practice, been allowed maximum liberty to legislate within the sphere assigned to them. The Governors have not used their power of vetoing (or withholding assent to) legislation nor has the Governor General exercised his powers of withholding assent to Bills reserved for his consideration by the Governor. No Act has been disallowed by His Majesty. On the other hand the Governors have not availed themselves of the power of issuing Ordinances at any time in *their discretion* or of enacting Governor's Acts. Such Ordinances as have been issued by them have been promulgated on the advice of their Ministers who are responsible to the legislature and have been, in each case, of invaluable help to the administration of the province.

RESTORATION OF GRANTS The Governors have also refrained from exercising their powers of restoration of grants refused or reduced by the Legislative Assembly.* But the charged expenditure has constituted by far the greatest stumbling block in the way of ensuring control of the legislature over provincial finances.

4 RESPONSIBLE GOVERNMENT IN THE PROVINCES

THE LESSON OF THE CONSTITUTION The working of the provincial constitution has been satisfactory in most respects. It has shown that by developing conventions and understandings capable of being enforced by strong public opinion organised through political parties, it is possible to derive the 'substance of inde-

* In Assam, the Governor exercised the power of restoration so as to maintain the system of Commissioners.

pendence" in the provinces even from the present constitution. If the true test of a constitution lies not in its theoretical perfection but its smooth working, the provincial part of the constitution must be pronounced a success. The indelible impression left on the mind by the working of the provincial constitution is that Responsible Government in the provinces was realised in a very large measure.

ACHIEVEMENTS OF POPULAR MINISTRIES.

This was also evident from the vigorous activity with which popular ministries were able to launch

ambitious programmes of legislative and administrative reform in order to re-construct the economic and social life of their provinces. Though in seven out of the eleven provinces this activity has suffered a temporary set-back due to the resignation of the Congress ministries, there is no doubt as to the immense enthusiasm with which a new life was infused in the administrative machinery during their term of office. The evils of red-tapism were partially remedied by personal attention on the part of ministers and the Services were called upon to show greater courtesy and sympathy in dealing with the public and to accustom themselves to "a rapid response to public grievances, a new spirit of enterprise and drive, and a courage to experiment and to take measures from which Governments under the previous constitution would have shrunk."* As a preliminary step to the introduction of various reforms, Provincial Governments appointed a number of expert committees to review different problems and make suitable sugges-

* Sir Harry Hail's paper on "The United Provinces and the New Constitution," *Asiatic Review*, July 1940.

tions for legislative and administrative action. These committees covered a variety of topics and their recommendations formed the basis of Government measures. Among the most important reforms carried out by popular ministries may be mentioned the following —*

1 *Education* Extension of primary education, literacy campaigns among adults, starting of technical institutions, attention to physical training, etc

2 *Agriculture* Liberal policy of suspensions and remissions of land revenue, Tenancy legislation,
3 *Rural Debt Relief*, Regulation of Money-lenders,⁴ improved marketing⁵ of agricultural produce, Irrigation programmes, aid to cottage industries⁷ etc

3 *Rural Development* Provision of drinking water in the villages, extension of medical facilities, Road-development, etc

4 *Social Reform* Prohibition, Temple Entry Legislation, removal of miscellaneous disabilities suffered by the scheduled classes, etc

5 *Industries* Industrial and Economic Surveys, increase in wages of labour, Legislation for Settlement of Industrial Disputes etc

6 *Local Self Government* Abolition of nominations in municipalities and local boards, re-construction of village panchayats

* The list is not comprehensive and is more an abstract of tendencies throughout India than a summary of the achievements of any particular government.

CRITICAL
ESTIMATE OF THE
ACHIEVEMENTS.

Many of these reforms were long over-due and were therefore universally welcomed, though some of them naturally aroused opposition from vested interests. Unfortunately, a few gave rise to vigorous opposition as they were alleged to affect a particular community or interest. Among these may be mentioned the Prohibition programme of the Bombay Government, the Bombay Industrial Disputes Act, the Tenancy Legislation in the United Provinces, the Calcutta Municipal Amendment Act and the Bengal Secondary Education Act. Apart from the intrinsic merits of the programmes of provincial ministries, the point of constitutional interest that emerges is that the new ministers found ample opportunities to redeem their pledges to the electorate. In fact, the Congress ministries forgot their original object of accepting offices to 'wreck' the constitution and were the most enthusiastic in working it. Perhaps, the reality of the transfer of power was a surprise to them. As Sir Harry Halg has put it, "There is reason to think that the Congress also could not bring themselves to believe that so much power was really being transferred."

LIMITATIONS OF
RESPONSIBLE
GOVERNMENT

This does not, however, mean that the Ministers were all powerful in the provinces. In the first place, the very forbearance of the Governor from the exercise of powers vested in him was based on an understanding which could not survive a definite or radical difference of outlook between the Governor and his Ministers. This was a conscious or unconscious check on the popular Ministries who had naturally to forego

all radical measures, in order to continue their good relations with the Governor. Secondly, the Ministers found it extremely difficult to work the constitution in a progressive spirit so long as the financial resources of the province were restricted to the levy of taxes allowed to them by the Government of India Act, 1935, and so long, further as about three fourths of the total revenues were required to meet expenditure which was charged on the revenues of the province. Their programmes had, therefore to be severely curtailed. The other restrictions on Responsible Government in the provinces were the result of provisions governing the relations between the Centre and the provinces. These are analysed in the next section.

LACK OF POLITICAL PARTIES

But while these constitutional limitations still left the ministries ample scope for their activities for some time to come, the future of Responsible Government in the provinces to be seriously challenged by the persistent lack of political parties and by the consequent emergence of the problem of communal minorities in India.

POLITICAL PARTIES

It is a well known principle that the smooth working of Parliamentary Government is dependent on the presence of a few well organised political parties. The singular lack of such parties in India is regarded by many as a chief stumbling block in the way of India's constitutional development. The working of the provincial constitution has demonstrated the truth of this remark beyond all possibility of doubt.

The Indian National Congress, the largest and the most well-organised political party, was able to conduct administration in eight provinces out of which in six it did not have to rely for help on any other party in the legislature. This dominant position of one party, owing allegiance to a common High Command, was largely instrumental in establishing healthy practices of Joint Responsibility among Ministers and in inculcating strict regard for parliamentary conventions. Unfortunately, this also led to two evils. Firstly, the comfortable majority enjoyed by the Congress parties in the different legislatures coincided with a general lack of organised opposition with the result that while the party in power was deprived of an opportunity to listen to constructive criticism,* the few elements of opposition indulged in irresponsible and bitter expression of their hostility to Government policy. Secondly, the organisation of the Congress on an All-India basis laid it open to the charge that the ministry was not taking its orders from the provincial electorate but was looking for inspiration to the Congress High Command. In those provinces where the Congress party was not able to form Ministries, the position was less satisfactory, except in the Punjab where the Unionist party had a majority. In Assam, North-West Frontier Province, Bengal and Sind Coalition Ministries had to be formed. The Assam, and North-West Frontier Coalition Ministries originally formed

* "Democratic Government thus demands not only a Parliamentary majority but also a Parliamentary minority . . . The Opposition is at once the alternative the Government and a focus for the discontent of the people. Its function is almost as important as that of the Government. If there be no Opposition there is no democracy. 'His Majesty's Opposition' is no idle phrase. His Majesty needs an Opposition as well as a Government." Jennings, *Cabinet Government*, p. 15. The leader of the Opposition in England now gets a regular salary of £2000 per annum.

in April 1937, gave place to Congress Coalition Ministries some time later, the Bengal Ministry, with a few defections has had, on the whole, a smooth sailing, but the Sind Coalitions have come out the worst of all. The first Coalition Ministry lasted for less than a year the second had its existence threatened almost in every session of the legislature and ultimately succumbed about two years after assumption of office. the third Ministry resigned after a few months and a fourth ministry is now functioning. Multiplicity of parties and the extreme fluidity of the elements in the legislature whose members change their political opinions as often as it suits their personal interests, are primarily responsible for this state of affairs. Instability of Ministries should be a matter of serious concern to any province, and most of all to a young and undeveloped province like Sind where programmes of economic and social reconstruction require urgent attention. The necessity for developing political parties on certain principles is, therefore, paramount if responsible government in the provinces is to yield any material results. The problem acquires added importance due to the fact that at present most of the parties in the provincial legislatures are based on communal bonds, with the result that communal minorities are always at the mercy of the majority community. This can be got over by shaking off communal trammels and forming political parties so that economic and political ideologies may take the place of communal hickerings. But so long as we have communal electorates and the deep distrust between the different communities, there can be no such immediate prospect. This has led to the cry that democracy of

the parliamentary type is not suited to India. This difficulty was anticipated by the Joint Parliamentary Committee, 1934, which reported: "Parliamentary government as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of public opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist to-day."*

COALITION MINISTRIES.

But while these above considerations only convinced the committee to intro-

duce certain safeguards "in the Constitution, the system of Parliamentary government has been subjected to severe criticism in India on the ground that under the present circumstances it can only mean the permanent rule in each province of a communal majority and the consequent exclusion from office, or relegation to unimportant portfolios, of the representatives of the minority. Hence, the proposal for Coalition Ministries, in which representatives of the minorities may be included, has been widely canvassed by a section of opinion in India, but any such provision by law would strike at the very root of the principle of Joint Responsibility and thereby undo what little has been achieved by now. It would introduce the communal virus right into the delibera-

* J. P. C. Report. Vol. I, p. 11.

tions of the Government itself. But if the only alternative to them is a complete deadlock and an intensification of communal feelings, they may be resorted to provided there is a prior agreement upon a body of specific objects which they agree to be temporarily more important than these differences,* and in the hope that the communities may thereby learn to gradually lose their differences by concentrating on far reaching economic and social programmes and relegating communal issues to their proper place, so that in time to come communal divisions may lose all force and such coalitions may then become redundant.† To advocate coalitions as a normal or permanent feature of an constitution is to perpetuate our communal divisions and render the executive incapable of united and vigorous action. It will be a serious aggravation of an evil which is already inherent in parliamentary democracy.

5 PROVINCIAL AUTONOMY

TWO MEANINGS The expression "Provincial Autonomy" is freely used in relation to the provincial part of the new constitution. But in popular usage the term conveys two meanings, not often kept distinct. It may mean either that the provinces are broadly free from control by the Government of India and are, in that sense, independent or autonomous, or that the government of the province is *responsible* to the people through their representatives in the legislature.

THE PROPER MEANING

In its proper sense, Provincial Autonomy means freedom from central control, the institution of a form of government

* Laski *Parliamentary Government in England* pp 78-9

† cf. Prof. D. N. Bannerjee's paper on *The Problem of Party Government in India*. *The Indian Journal of Political Science* April 1941

"whereby each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature."* This, according to the Joint Parliamentary Committee, is "the essence of Provincial Autonomy." This meaning of the term leaves unsettled the manner in which this exclusive and broadly uncontrolled authority of the province is to be exercised; it does not imply that the Executive of the province will necessarily be responsible to the Legislature. A government of a province free from central control, but not responsible to any legislature or other body in the province may also, according to this constitute Provincial Autonomy.

NECESSITY OF DISTINCTION.

In India, Provincial Autonomy is popularly identified with Responsible Government and the strict meaning of the term is often not borne in mind. It must be recognised that the use of the expression should not lump together these two different requirements which may not necessarily exist side by side. The one refers to relations between the province and the Centre, while the other conveys the idea of self-government. There is no doubt that before Responsible Government can become real in a province, the control of provincial affairs by the Centre should cease; every case of Central interference will be a breach in the principle of self-government in the province; to that extent, Provincial Autonomy is a condition precedent to the establishment of Responsible Government, but there

*J. P. C. Report, p. 23

may be Provincial Autonomy and yet no Responsible Government.

6 HOW FAR HAS PROVINCIAL AUTONOMY BEEN INTRODUCED IN INDIA ?

The question of *autonomy* of the provinces must chiefly relate to their relations with the Centre and resolve itself into the query how far are the provinces free from Central control in provincial affairs ?

NEW STATUS OF THE PROVINCES

The constitution of India, embodied in the Government of India Act, 1935, is based on federal principles, and confers a new status on the provinces which were hitherto, mere agents of the Government of India. The legislative financial and administrative powers of the provinces are no longer derived from the omnipotence of a Central Government, but are specifically laid down in an Act of Parliament which also prescribes the powers of the Central Government. This at once gives to the provinces a higher constitutional status which, as mere administrative units, they have hitherto lacked. In so far as the Act of 1935 provides for a field of exclusive jurisdiction of the Provincial Executive and Legislature, it marks a distinct improvement in the position of the provinces. But their autonomy is subject to several limitations.

INTERVENTION IN SCOPE OF LEGISLATION

Firstly, the scope of Provincial legislation is not strictly exclusive. Even on matters included in the Provincial Legislative List, the Federal Legislature can pass laws if the Governor-General issues a Proclamation of Emergency. With regard to matters included in

the Concurrent Legislative List, the Federal Law prevails in case there is a conflicting Provincial Law, and the latter can prevail over the Federal Law only with the assent of the Governor-General or His Majesty. There are thus no rigidly marked boundaries separating the Provincial sphere from the Federal, so as to exclude *all* possibilities of encroachment by the latter.

**GOVERNOR-
GENERAL'S
POWERS IN
LEGISLATION.**

Secondly, with regard to introduction of several kinds of Bills or Amendments in the Provincial Legislature, the previous sanction of the Governor-General is necessary.*

Bills duly passed by the Provincial Legislature may be reserved for the consideration of the Governor-General who may either assent to the Bill, or withhold assent, or reserve it for the signification of His Majesty's pleasure thereon, or return the Bill for reconsideration by the provincial legislature.

**GOVERNOR'S
RESPONSIBILITY
TO THE GOVERNOR-
GENERAL.**

Thirdly, whenever a Governor of the province acts in his discretion or exercises his individual judgment, he is subject to the control of the

Governor-General. This is so wide and sweeping a reserve of power in the hands of the Governor-General that it may place the whole of the legislative, financial and administrative machinery in the hands of the Governor-General. The Governor while withholding assent to legislation, issuing Ordinances in his discretion or individual judgment, enacting Governor's Acts, exercising Special Responsibilities,

* See Chapter IX, p. 194.

restoring grants not sanctioned by the Legislature etc., is subject to the control of the Governor General.

FEDERAL
DIRECTIONS

Fourthly, the executive authority of every province is to be so exercised as not to impede or prejudice the exercise of authority of the Federation. And for securing this the Federation may give necessary directions to a province. Such directions may be issued in particular to carry into execution an Act of the Federal Legislature and to construct and maintain means of communication declared to be of military importance. And if it appears to the Governor-General that in any province effect has not been given to any directions so given, the Governor General acting in his discretion, may issue necessary orders to the Governor of the province.

GOVERNOR
GENERAL'S
SPECIAL
DIRECTION

Fifthly, the Governor General, acting in his discretion may at any time issue orders to the Governor of a province as to the manner in which the executive authority of the province is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof.*

GOVERNOR AS
AGENT OF THE
GOVERNOR
GENERAL.

Sixthly, the Governor General may direct the Governor of any province to discharge as his agent such functions in relation to tribal areas as may be specified. If in any particular case, it appears to the Governor-General necessary, he may direct the Governor of

* This power was actually exercised by the Governor General in 1918 to prevent the release of political prisoners by the then Congress Ministries of the United Provinces and Bihar. But due to the tendering of resignation by the Ministries concerned, the issue was compromised and the resignation of the Ministries withdrawn.

any province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

**FEDERAL
EXECUTIVE
INTERVENTION IN
THE PROVINCES**

And *lastly*, an amendment of the Government of India Act, 1935, carried in 1939, confers on the Federal Government additional powers. It

has already been noted above that the Federal Legislature can pass laws on matters included in the Provincial Legislative List, if a Proclamation of Emergency is issued by the Governor-General. There was, however, no provision for the Federal Government to carry out those laws in the provinces through their own officials. The recent amendment, therefore, authorises the Federal Government, in time of war only (but not in case of other emergencies) to take necessary executive action and issue directions to the Provincial Governments in relation to the emergency powers exercised by the Federal Legislature.

**CONSTITUTIONAL
SIGNIFICANCE OF
THE LIMITATIONS,**

The foregoing limitations are vital encroachments on Provincial Autonomy and are couched in such vague

and elastic terms that they may yield any meaning convenient to the Federation. Provincial Autonomy, in the strict sense of the word, is not granted by the constitution. Nor is it necessarily an ideal. Perhaps a unitary government for *British India*, having no place for Provincial Autonomy, may be welcomed by those who prize national unity above all else; but the above limitations on Provincial Autonomy are to be deprecated on the ground that each of them constitutes a hindrance to the development of Responsible Government in the provinces. So long as the pro-

vinces are not free from central control, no Government of the province can be free to act in accordance with the wishes of the legislature

7 FAILURE OF CONSTITUTIONAL MACHINERY IN THE PROVINCES

ISSUE OF PROCLAMATION

If at any time the Governor of a province is satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of the Government of India Act, 1935, he may, *acting in his discretion*, issue a Proclamation and thereby declare that his functions shall, to such extent as he may specify in the Proclamation, be exercised by him in his discretion and assume to himself *all or any of the powers* of any provincial body or authority except those of a High Court. Such a Proclamation can be issued by the Governor only with the concurrence of the Governor-General, and must be communicated forthwith to the Secretary of State and shall be laid before each house of Parliament.

ITS DURATION

Such a Proclamation may be revoked or varied by a subsequent Proclamation and shall cease to operate at the expiration of six months, but the two houses of Parliament can, by passing resolutions approving the continuance in force of such Proclamation, extend its life, by a period of twelve months at a time, to a maximum period of three years. After that, the Proclamation shall cease to have effect and the government of the province shall be carried on in accordance with the other provisions of the Government of India Act, 1935, subject to any amendments made by Parliament. The language of the Act would give the impression that

such a Proclamation might be in force for a little less than three years and then if withdrawn for some time, it might again be in force for another lease of three years, and so on. If the Governor assumes to himself any powers of the Provincial Legislature, any laws made by him shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the Provincial Legislature.

CONCLUSION.

These provisions giving to the Governor complete control over the government of the province were intended to be in the nature of reserve powers. Ironically enough, only two and a half years after the inauguration of the constitution these powers had to be resorted to by the Governors in seven out of eleven provinces.* That a Constitution should envisage, and make provision for, its complete breakdown is an interesting feature of the Government of India Act, 1935.

* This was necessitated in November, 1939, by the resignation of the Congress Ministries in eight provinces, as a measure of protest against British policy with regard to the future of India. Only in Assam, was the Governor able to form an alternative Ministry; elsewhere, the constitutional machinery had to be suspended. The Governors appointed Advisers in place of responsible ministers and suspended the legislatures, assuming all legislative powers to themselves. The period of six months expired in April, 1940, but Parliament approved of the continuance of the Proclamation for one year and has again renewed it for similar period in April, 1941.

CHAPTER XI

FEDERAL FINANCE

(Governments in modern times require large amounts of money for carrying on their administration. This money is generally raised in the form of taxes levied on the people. The existence of more than one government in a country—e.g., the Central and Provincial governments in India, raises the question of finding suitable sources of revenues for each government, so that adequate amounts may be secured for the smooth and efficient administration of the country's affairs.

1 HISTORICAL BACKGROUND

INTRODUCTORY The present financial system of India is a product of gradual evolution made during the last century and a half. For a long time the right to levy taxation and authorize expenditure was vested only in the Government of India and the provincial governments were looked upon as mere agents of the Central government, both in collecting and spending money. The history of financial relations between the Central and Provincial governments falls into three well-defined periods. During the first period from 1833 to 1871, there was complete centralisation of finance, the second period, from 1871 to 1919, witnessed a process of gradual financial decentralisation, and during the third period, from 1919 to 1936, a clear dis-

tion was made by rules between Central and Provincial heads of revenues and expenditure. The acceptance of the ideal of Federation and the introduction of Provincial Autonomy in April 1937 have brought new considerations which lie at the basis of the present arrangement.

THE FIRST PERIOD The policy of concentration of all
 1833 TO 1871 authority—legislative, administrative and financial, in the hands of the Central Government, was pursued ever since the passing of the Regulating Act of 1773. It led to the complete subordination of the provincial governments to the Centre. The provincial governments could neither raise money nor spend it without the express authority of the Centre. "If it became necessary," wrote Sir John Strachey, "to spend £20 on a road between two markets, to rebuild a stable that tumbled down, or to enteratin a menial servant on wages of 10 shillings a month, the matter had to be formally reported for the orders of the Government of India." Such a system could not hut lead to gross waste, as no provincial government would have any incentive for economy. Besides, it enforced a harren uniformity in a country whose diversity of conditions called for local independence and initiative. The provincial governments, having no interest in the development of the revenues, offered little co-operation in the matter, with the result that there was neither economy nor elasticity, nor the necessary diversity in the financial system. To quote again Sir John Strachey, "The distriuhution of the public income degenerated into something like a scramble, in which the most violent

had the advantage with very little attention to reason. As local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvements, the interest in developing the public revenues was also brought down to the lowest level "

THE SECOND
PERIOD
1871 TO 1919

The first step towards financial devolution was taken in 1871 when Lord Mayo's Government initiated the system of Provincial Settlements "by which certain heads of expenditure of a local character, along with the revenue or departmental receipts yielded by them, were transferred to the Provincial Governments" These heads were —Police, Jails, Education, Roads and Civil Works, Medical Services, and Registration As the revenue received under these heads was not adequate to meet the cost of administration, the provinces received certain annual lump-sum grants from the Central Government, and were required to make up the deficiency, if any, by local taxation This at once led to a greater sense of responsibility among the provincial governments which tried to distribute their limited resources in the best possible way But, the annual settlement of lump sum grants gave rise to provincial rivalries and the provincial governments soon discovered that the practice of economy on their part would only bring about a reduction in the amount assigned to them in the next financial settlement. In 1877, Lord Lytton's Government carried the process a step further, by transferring additional heads to the provincial government. These were —Land

Revenue, Excise, Law and Justice, General Administration, and Stamps. The annual grants allowed to the provinces were raised and in addition a share in the revenues yielded by Excise and Stamps was given to them. Thus a beginning of the system of "divided heads" was made. In other ways, this arrangement was merely an extension of the principles of the settlement of 1871, and contained all the defects of that settlement. In 1882, Lord Ripon's Government introduced two main changes. *Firstly*, the head of revenue were divided into three main categories:— (i) Imperial heads:—Customs, Salt, Opium, etc.; (ii) Provincial heads:—Departmental Receipts under heads of Expenditure and Provincial Rates or local taxes; (iii) Divided heads:—Excise, Stamps, Forests, Registration, etc. The system of lump-sum grants was abolished, and instead, the provinces were assigned a share in Land Revenue which thus became a "divided head." *Secondly*, the settlements were to be made thereafter not every year, but every five years. Minor changes were made in such subsequent settlements in 1887, 1892 and 1897. In 1904, Lord Curzon's Government declared these settlements as quasi-permanent. In 1912, Lord Hardinge's Government, after making certain changes on the recommendations of the Royal Commission on Decentralisation which presented its report in 1909, declared these settlements as permanent. These arrangements continued till the introduction of the Reforms in 1919.

CRITICISM OF THE
PRE-REFORMS
ARRANGEMENT.

The financial arrangements existing before 1919 contained various grave defects. The Divided heads were a veritable bone of contention and led to inter-

ference by the Central Government in provincial matters; provincial inequalities and jealousies led to extravagance and mutual recrimination; and the provincial governments were yet too subordinate to the Central Government in as much as they could frame no separate budgets, and had no independent powers of taxation and borrowing.

THE THIRD
PERIOD
1913-1936

The Reforms of 1919 ushered in a new era in the history of Indian finance. As the provinces were given a partial measure of responsibility, it was necessary to allocate the heads of expenditure and the sources of income so as to free them from constant interference by the Centre. Hence, the first change made in the financial relations between the Centre and the provinces was the abolition of "divided heads." A clear distinction between Central and Provincial heads was drawn by rules made under the Government of India Act, 1919. The Central heads included Customs, Income-tax, Railways, Posts and Telegraphs, Opium, Salt, Military Receipts, etc., and the Provincial heads included Land Revenue, Stamps, Registration, Excise and Forests. The provincial governments were now authorised to levy taxation on their own authority, on matters classified as provincial and were empowered to frame their own budgets. Thus a limited independence was granted to them, so that they were no longer entirely at the mercy of the Government of India. But the abolition of "divided heads" and the complete transfer of certain lucrative sources, particularly land-revenue, to the provinces, soon created a problem for the Central Government which found its financial position adversely

affected. It demanded certain contributions from the provinces to make up for the deficit in the Central budget. Accordingly, a committee, presided over by Lord Meston, was appointed to go into the question and fix the amounts of contribution payable by different provinces. The recommendations of the Meston Committee, referred to in popular language as the Meston Award, gave rise to protests from almost all provinces each of whom complained of singularly unfair treatment. This system of provincial contributions being unpopular and wrong in principle met with insistent opposition; but it was continued till 1928-29 when it was finally abolished.

2. THE PROBLEM OF FEDERAL FINANCE

THE NATURE OF THE PROBLEM. The acceptance of the idea of All-

India Federation created a fresh problem of putting the financial relations between the Federation and the Provinces on a footing compatible with the basic principles of federalism. Though the principles by which public finance is conducted are the same in a Federal, as in a Unitary State, it is necessary in a federal constitution that the sources of revenues and the heads of expenditure should be allocated among the Federal and Provincial Governments by the constitution itself. Such allocation should be rigid so as to remove all possibilities of encroachment or of over-lapping jurisdiction, and must be such that it fits in with the distribution of legislative powers among the Federation and its units. It is further necessary to see that the arrangement decided upon secures adequate funds to each government and is conducive to administrative convenience

and economy The problem of Federal finance is, therefore, to harmonize a rigid allocation of financial powers with adequacy for all, at the same time having regard to administrative convenience and economy Such a problem admits of no single solution applicable to all federations The prevailing circumstances in a country determine the detailed lines on which it could be solved

SCHEME ADOPTED
IN INDIA.

The scheme of federal finance adopted in India is the result of the deliberations of several bodies. The Federal Finance Sub-Committee of the Round Table Conference, known as the Peel Committee, laid down in 1931 the general principles and left to the Percy Committee to settle the details The Joint Select Committee in 1933-34 reconsidered the whole problem, and its recommendations were in the main embodied in the provisions of the Government of India Act, 1935 The Act, however, left several matters of detail undecided and provided for their settlement by Orders in Council Accordingly, Sir Otto Niemeyer, an official of the British Treasury was deputed to India to conduct a financial enquiry His recommendations, popularly known as the Niemeyer Award, were accepted in toto and Orders-in-Council were issued in accordance with them. The present financial relations between the Centre and the Provinces are therefore governed by the provisions of the Government of India Act, 1935, as supplemented by Orders-in-Council

3 FINANCIAL RELATIONS BETWEEN THE CENTRE AND THE PROVINCES

The governing principle of the present financial relations between the Government of India and the

Provincial Governments is contained in the rigid line drawn between Federal and Provincial sources of revenue. Thus each has a well-marked sphere definitely assigned to it; any encroachment by the other being *ultra vires*.

FEDERAL REVENUES.

The following taxes included in the Federal Legislative List can be levied only by the Government of India:—(i) Customs duties; (ii) Duties of Excise on tobacco and other goods manufactured in India except alcoholic liquors hemp, drugs, etc., (iii) Taxes on Income other than agricultural income; (iv) Corporation Tax; (v) Duties on Salt; (vi) Taxes on the capital value of property, other than agricultural land; (vii) Taxes on the capital of companies; (viii) Duties in respect of succession to property other than agricultural land; (ix) Stamp duties on bills of exchange, cheques, etc., (x) Terminal taxes on goods and passengers carried by rail or air; (xi) Taxes on railway fares and freights.

PROVINCIAL REVENUES.

The following taxes included in the Provincial Legislative List can be levied only by the Provinces:—(i) Land Revenue; (ii) Excise duties on intoxicants like liquor, hemp and drugs; (iii) Taxes on Agricultural Income; (iv) Duties in respect of succession to agricultural land; (v) Judicial Stamps; (vi) Taxes on land, buildings, hearths and windows; (vii) Capitation taxes; (viii) Taxes on professions, trades and callings; (ix) Taxes on sale of goods; (x) Taxes on entertainments, amusements and gambling; (xi) Taxes on mineral lights; (xii) Taxes on animals and boats.

FINANCIAL
ADJUSTMENTS.

The above broad division is, however, subject to a few adjustments.

Ordinarily, the Government of India levies, collects and appropriates all revenues secured from taxes included in the Federal Legislative List, but to that there are the following modifications. Firstly, the net proceeds of certain taxes levied and collected by the Federation have to be compulsorily handed over to the provinces.

NET PROCEEDS
ASSIGNED TO
PROVINCES

These taxes are:—Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by rail or air, and taxes on railway fares and freights. Here the Federal Government merely acts as a collecting agent for the provinces. The reason why these taxes were not included in the Provincial Legislative List was that uniformity of policy in these matters throughout India was regarded as of paramount importance.

SHARE OF
PROCEEDS TO
PROVINCES

— Secondly, the net proceeds of certain other taxes included in the Federal Legislative List, may be either entirely or in part handed over to the pro-

vinces. These taxes are:—Duties on Salt, Federal duties of Excise and Export duties. In the case of export duty on jute, however, the Federation is bound to assign to the jute-growing provinces (of Bengal, Bihar, Assam and Orissa) such percentage of the net proceeds, being not less than 50, as may be fixed by Orders-in-Council. It is to be distributed in proportion to the amounts of jute grown in the different provinces. This percentage has been fixed at 62½ on the recommendation of Sir Otto Niemeyer.

DIVISION OF INCOME TAX.

Thirdly, the Federal Government is not to pocket all the receipts from Income Tax, but is to hand over after a prescribed period, a percentage of the net proceeds of the tax, except the amounts collected from the Chief Commissioners' provinces and on federal emoluments, to the provinces. This percentage has been fixed by Orders-in-Council, issued in accordance with the Niemeyer Award, at 50; and the amount so payable is to be divided among the different provinces on the following percentage basis:—Bombay and Bengal 20 each; Madras and the United Provinces 15 each; Bihar 10; Punjab 8; Central Provinces 5; Assam 2; Orissa 2; Sind 2; and North-West Frontier Province 1.

The Federation may, however, levy a federal surcharge on Income tax, the proceeds of which would form part of Federal revenues.

And *fourthly*, certain provinces receive annual cash subventions or grants in aid as recommended by Sir Otto Niemeyer.

1. The United Provinces:—Rs. 25 lakhs per year for five years.
2. Assam:—Rs. 30 lakhs per year.
3. The North-West Frontier Provinces:—
‘Rs. 100 lakhs per year.
4. Orissa:—Rs. 47 lakhs in the first year (1937), Rs. 43 lakhs in each of the next four succeeding years; and in every subsequent year, Rs. 40 lakhs.
5. Sind:—Rs. 110 lakhs in the first year (1937), in each of the next nine years Rs. 105 lakhs; in each of the next twenty years, Rs. 80 lakhs; in each of the next five years, Rs. 65 lakhs; in each of the next five years, Rs. 60 lakhs; and in each of the next five years, Rs. 55 lakhs.

BORROWING. The provinces are now given the right to borrow money on the security of their own revenues, within such limits as may be fixed by the Provincial Legislatures. A province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the province by the Government of India. Such a consent is not to be unreasonably withheld, nor is any unreasonable condition to be imposed in respect of provincial borrowing; if there is any dispute as to the reasonableness of such refusal or condition, the decision of the Governor-General in his discretion shall be final.

All loan operations of the Provincial (and Federal) Governments are to be conducted through the Reserve Bank of India.

CONCLUSION The financial arrangement explained above represents an honest attempt to secure a fair treatment both to federal and the provincial governments. It has not, however, been entirely free from criticism on grounds of inequality of treatment and inadequacy of revenues granted to the provinces. The present financial position of the Government of India and the various provincial governments may now be briefly noted.

4. REVENUE AND EXPENDITURE OF THE GOVERNMENT OF INDIA

The main sources of income and the chief heads of expenditure of the Government of India are shown in the following table.

Government of India—Revenue and Expenditure
(In lakhs of Rupees)

Revenue	Revised Estimates 1939-40	Budget, Estimates 1940-41	Expenditure	Revised Estimates 1939-40	Budget Estimates 1940-41
Principal Heads of Revenue			Direct Demands on Revenue	3 87	4 07
Customs	43 94	39 16	Railways	29 53	32 51
Central Excise Duties	6 13	10 14	Irrigation	10	11
Corporation Tax	2 17	5 30	Posts and Telegraphs	74	69
Taxes on Income other than Corporation Tax	13 13	14 20	Debt Services	12 28	12 11
Salt	9 00	8 20	Civil Administration	11 12	11 81
Opium	49	47	Currency and Mint	42	62
Other heads	98	1 01	Civil Works & Miscellaneous Public Improvements	2 76	3 23
Total	75 84	73 49	Miscellaneous	3 72	3 67
Departmental Receipts, etc.			Defence Services	55 17	59 41
Railways Net Receipts	33 18	37 82	Contributions to Provincial Governments	3 06	3 05
Irrigation Net Receipts	—	1	Extraordinary Items	1 11	41
Posts and Telegraphs Net Receipts	1 59	1 07			
Debt Services	73	61			
Civil Administration	1 04	1 06			
Currency & Mint	89	1 23			
Civil Works & Miscellaneous Improvements	29	33			
Miscellaneous	1 43	1 20			
Defence Services	5 89	5 89			
Extraordinary Items	3 10	4 03			
Total Revenue	123 97	131 74	Total	123 97	111 74

CENTRAL
REVENUES.

On the Revenue side, by far the most important source of income is Customs. This includes duties on goods imported into India and duties on certain goods, mainly jute and rice, exported from India. Next in importance comes Income Tax; this is now paid on a graduated scale by all those whose incomes are Rs. 2,000 per year or more. There is also a Super-tax paid on large incomes and an Excess Profits Tax has been recently levied after the outbreak of war. Salt and Central Excise duties (on matches, sugar, kerosene) are also important sources of revenue. These are taxes on necessities of life and the tax on salt has drawn special attention as being a tax on the very poorest. Opium which was once an important source has now been completely dried up due to the stoppage of export of opium to China.

CENTRAL
EXPENDITURE.

On the side of Expenditure, about half the money is spent on Defence Services; judged by any standards of modern, expenditure, this is clearly excessive in the case of a poor country like India. Railways and Civil Administration account for another one-third of the total expenditure and the payment of interest etc., on Public Debt absorbs about Rs. 12 crores every year. Thus hardly any appreciable sum is spent on any nation-building activities which have all been transferred to the Provincial Governments.

5. THE REVENUE AND EXPENDITURE OF PROVINCIAL GOVERNMENTS

The provincial governments derive their income from the following main sources.—

REVENUE

(In lakhs of Rupees)

1939-40

Heads of Revenue	Madras	Bombay	Bengal	U P.	Punjab	C P.	Assam	Bihar	Orissa	Sind
Land Revenue	5 00	3 39	3 04	6 05	2 76	2 42	1 33	1 32	49	31
Excise	3 53	1 77	1 57	41-15 1 16	1 11	58	31	1 04	23	85
Stamps	1 57	1 44	2 66	1 44	5 86	44	19	1 05	18	17
Forests	45	42	22	50	24	49	17	7	6	7
Registration	32	14	23	10	10	6	2	12	2	2
Irrigation	2 05	19	—2	1 63	4 59	7		18	8	67
Total	16 41	12 90	13 78	13 27	12 02	4 85	2 84	5 38	1 84	3 83

The chief heads of expenditure of the provincial governments are as follows :—

EXPENDITURE.

(In lakhs of Rupees.)

1939-40.

Heads of Expenditure.	Madras	Bombay	Bengal	United Pro.	Punjab	C. P.	Assam	Bihar	Orissa	Sind
General Administration ..	2.84	81	1.80	1.50	1.17	69	34	75	29	25
of Justice ..	93	68	1.02	73	54	26	10	37	7	13
Jails & Convict Settlements ..	23	16	35	32	30	8	5	19	3	7
Police ..	1.62	1.44	2.32	1.67	1.27	59	34	80	23	40
Education ..	2.65	2.10	1.68	2.15	1.65	57	38	79	27	31
Medical ..	97	48	59	37	65	17	15	25	9	8
Public Health ..	29	31	49	24	24	6	8	14	3	3
Agriculture ..	34	20	23	86	59	16	9	15	3	10
Industries ..	27	13	21	30	21	4	3	11	3	1
Cooperation ..	14	18	15	7	19	3	1	5	2	1
Civil Works ..	1.60	1.35	1.59	70	1.40	54	52	47	30	43
Debt Services ..	—37	1.24	19	71	—23	23	5	6	1	5
Direct Demands on Revenue ..	2.05	1.72	1.04	1.01	87	65	49	38	19	28
Total ..	16.41	12.94	14.65	14.01	11.96	4.83	3.02	5.38	2.03	3.76

The total Revenues and Expenditure of the different provinces naturally vary Madras, Bombay, Bengal, the United Provinces and the Punjab spend three or four times as much as any of the remaining provinces Sind, Orissa and Assam are the poorest provinces, considering their total income and expenditure The Revenues of the Provinces are derived from a few main sources Land Revenue naturally holds a pre-eminent position in each province Excise duties on liquors and other intoxicants like bemp drugs, etc, come next, then come Stamps on judicial and other documents The incomes from Forests, Registration and Irrigation are not generally appreciable On the side of Expenditure, General Administration, Administration of Justice and Police and Jails absorb about one-third of Provincial revenues, with the result that sufficient funds are not left for the numerous departments of a developmental character

THE PROBLEM OF
PROVINCIAL
FINANCE

The working of the provincial part of the new constitution has exposed the financial difficulties which most of the provinces have to face. Land Revenue being collected mostly from petty farmers with small holdings not only does not admit of expansion, but is in immediate need of reduction, and a policy of remissions and suspensions has been actually adopted by most of the Provincial Governments The revenue from Excise has long been regarded in India as immoral, or at least anti-social, and programmes of gradual—and in some cases rapid—introduction of prohibition have been attempted in most provinces—particularly in those where the Congress Ministries

were in power. Such a policy has already resulted into huge losses to the Provincial government. The completion of the Prohibition programme would not only mean the disappearance of revenue from excise, but would actually saddle the Provincial revenues with recurring expenditure on preventive staff appointed to check smuggling and illicit manufacture of liquor, etc. With such gloomy prospects on the revenue side, the Ministries have naturally found it impossible to set aside adequate funds for financing their programmes of developing education, industries, agriculture and other departments of public welfare.

THE SOLUTION.

The solution of the problem of provincial finance may be briefly summed up as follows. There should be, in the first instance, the strictest economy in all departments so as to eliminate all wasteful expenditure. In so far as certain expenditure, specially salaries of high officials, is charged on the revenues of the province, the hands of the provincial government are practically tied; but every avenue of administrative economy should be explored. Secondly, the present sources of income should as far as possible, be jealously guarded. Bold programmes, such as those of prohibition and drastic reductions in land revenue, which imply immediate and wholesale curtailment of revenues, should be considered along with the necessity of spending funds for the development of nation-building activities, like education, health, industries, agriculture, etc. Thirdly, the scope for fresh taxation should be carefully examined. Taxes on sale of goods, Duties on succession to property, Taxes on Agricultural Income, and other like measures, may be devised so as to bring in fresh

revenues, without throwing any appreciable burden on the poorer classes. In short, the question is one of augmenting the present resources and spending them in such a way that they yield the maximum welfare of the province.

CHAPTER XII

THE HOME GOVERNMENT OF INDIA

HOME GOVERNMENT.

The expression "Home Government" refers to that part of constitutional machinery for the governance of India, which is located in England. The political subordination of India to Great Britain necessitates the establishment, in that country, of an authority to control Indian affairs.

THE CROWN

Since the passing of the Government of India Act, 1858, the control over the Government of India is vested in the Crown. The Crown in England acts on the advice of Ministers and this practice, though based on a mere convention, is as rigidly binding as any law could be. The functions and powers of the Crown in relation to India are, therefore, exercised through a Secretary of State who is the constitutional adviser of the King in all matters affecting the Government of India.

1. THE SECRETARY OF STATE FOR INDIA

The office of the Secretary of State for India was first created in 1858, when the control over the Government of India was transferred from the East India Company to the Crown. All powers, hitherto exercised by the Court of Directors of the Company and the Board of Control, were vested in the Secretary of State.

RESPONSIBILITY
TO PARLIAMENT

The Secretary of State for India is a member of the British Cabinet and like his colleagues is appointed by the Crown on the recommendation of the leader of the party which has a majority in the House of Commons. His is therefore a purely political office with no fixity of tenure. He is a member of one of the houses of Parliament and is, along with his other colleagues responsible to it. He continues in office so long as his party commands a majority in the Commons and, as a rule, the members of the Cabinet have a joint responsibility in as much as they take up and relinquish office together.

✓ The control of Parliament over the Secretary of State for India and other members of the Cabinet is complete. By means of interpellations, resolutions and debates the members of Parliament can criticise the policy of the Government in relation to India and since Parliament has the ultimate powers of legislating for India or refusing to sanction the salary of the Secretary of State for India or moving a vote of censure against the Cabinet its slightest wishes are respected by the Secretary of State. In practice however Parliament allows great latitude to the Secretary of State. (Preoccupation with home or foreign affairs, unanimity of different political parties in England with regard to Indian questions, the comparative stability of the administration in India and a general sense of indifference attributable to ignorance of Indian conditions and the long distance involved make the Secretary of State virtually independent in his day to day decisions though on questions of policy he acts according to the wishes of the Cabinet as a whole).

UNDER- SECRETARIES.

The Secretary of State for India is assisted by two Under-Secretaries—one Parliamentary and the other Permanent. The Permanent Under-Secretary is an official of the Civil Service in England and controls the entire department, providing expert advice and information to the Secretary of State. His tenure of office is entirely independent of any changes in the composition of the Ministry. As an administrative head, his duties are primarily those of a routine character. The Parliamentary Under-Secretary is, however, a prominent member of the party in power and is a member of the British Parliament, usually selected from the house other than the one in which the Secretary himself sits. He expounds the policy of his chief, answers questions relating to India on his behalf and in every way acts as his political assistant. His office, like that of the Secretary of State, is political. Hence, changes in the composition of the British Ministry involve changes in his office also.

2. ADVISERS TO THE SECRETARY OF STATE

ABOLITION OF THE COUNCIL.

The Secretary of State for India being a politician of Great Britain is not ordinarily expected to possess detailed knowledge of Indian problems; hence the necessity of providing him with a Council of expert advisers was recognised ever since the creation of his office in 1858. With the lapse of time, the composition of the Council underwent great changes and, except in a few matters where the Secretary of State was bound to act in accordance with the decisions of the majority of the members of his Council, the functions of the Council were purely advisory. Opinion in India was emphatically against

the existence of the Council as it was reactionary in composition and was, in practice, little more than an expensive luxury serving as a screen, rather than as a check, on the activities of an omnipotent Secretary of State. Moreover, it was felt that with the establishment of self government in India the necessity of a body of advisers to the Secretary of State who would be reduced to the status of a constitutional head, would disappear. The retention of any such body would only give the impression that the transfer of power to the people was not intended to be real, and that the Secretary of State would still continue to exercise large powers and take important decisions. The continued existence of the Council was therefore regarded as incompatible with the grant of self-government to India.

APPOINTMENT OF ADVISERS The Government of India Act, 1935, while abolishing the old Councils, has made provisions for the appointment of Advisers to the Secretary of State. The corporate personality of the *Secretary of State in Council* has disappeared and its place has been taken by the *Secretary of State*. The number of Advisers is to be not less than three and not more than six, but the actual number may be decided by the Secretary of State for India, who is also responsible for their appointment. They hold office for a period of five years and are not eligible for re-appointment. Any Adviser may resign his office or may be removed from his office by the Secretary of State if he is satisfied that any person so appointed has, by reason of infirmity of mind or body, become unfit to continue to hold his office. No adviser to the Secretary of State is capable of sitting or voting

in either house of Parliament. One-half at least of the number of advisers must be persons who have held office for at least ten years under the Crown in India and must not have left India more than two years before the date of their appointment. Each Adviser receives an annual salary of £1,350; a special subsistence allowance of £600 per annum is given to those domiciled in India at the time of their appointment.

THEIR POWERS The duty of the Advisers is to advise the Secretary of State on any matter relating to India on which he may consult them. It is left to the discretion of the Secretary of State to consult his Advisers or not. If he decides to do so, he is free to consult them either individually or collectively, and is not bound to act in accordance with their advice. Exception is, however, made in the case of matters relating to Services, property and contracts where the Secretary of State is required to obtain the concurrence of a majority of his advisers before exercising his powers.

3. THE CONTROL OF THE SECRETARY OF STATE OVER INDIA

SUPREMACY OVER INDIA. As a constitutional adviser of the Crown and as a representative of the British Parliament, the Secretary of State is the political Chief of India. The Act of 1858 which created his office entrusted him with all powers hitherto exercised by the Court of Directors and the Board of Control. These plenary powers were thus summed up by the Government of India Act, 1919. "In particular, the Secretary of State may, subject to the provisions of this Act or rules made thereunder, *superintend,*

direct and control all acts, operations and concerns which relate to the Government or Revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India" (Italics mine)

GRADUAL RELAXATION

As the Act of 1919 provided for the gradual establishment of self-governing institutions in India and made provisions for "transferring some functions of the government in the provinces to Ministers responsible to the legislature, it was only natural that the authority of the Secretary of State should be correspondingly relaxed. This could not be provided by law, but was done by the development of conventions whereby the Secretary of State undertook not to interfere in "transferred' subjects except to secure certain defined purposes viz.—to safeguard central subjects, to decide questions arising between two provinces which have failed to agree to safeguard Imperial interests; to determine the position of the Government of India in respect of questions arising between India and other parts of the Empire, and to safeguard the exercise of powers and duties imposed upon the Secretary of State or the Secretary of State in Council by certain sections of the Government of India Act, 1919 At the centre no such transfer' was made and the authority of the Secretary of State was therefore preserved in tact, except for the adoption of a Fiscal Convention whereby the Secretary of State agreed to abstain from interfering in matters of India's fiscal or commercial policy whenever the Government of India and the Indian Legislature were in agreement

THE PRESENT
POSITION.

The Government of India Act, 1935, has introduced Provincial Autonomy and made provision for the transfer of all provincial departments to the control of a Council of Ministers. Accordingly, the statutory powers of the Secretary of State have now been couched in less general or comprehensive terms. The general right to "superintend, direct and control all acts, operations and concerns which relate to the Government or Revenues of India" is no longer expressly vested in the Secretary of State. But his powers are still enormous. *Firstly*, pending the inauguration of Federation, the Governor-General is still under the general control of, and is to comply with any particular directions as may from time to time be given to him by, the Secretary of State. And, in all matters in which the Governor of a province is required to act in his discretion, or to exercise his individual judgment, he is subject to the general control of the Governor-General in his discretion, and whenever the latter acts in his discretion, or exercises his individual judgment, he is under the control of the Secretary of State. Thus the Governors and the Governor-General are still responsible to the Secretary of State in that sphere of administration in which they have been armed with authority to rule otherwise than on the advice of Ministers. And since this sphere is technically large and includes all the "Reserved" departments at the Centre, the Secretary of State still wields vast statutory powers over the affairs of government in India.

Secondly, there are various other statutory powers vested in the Secretary of State, the more important among them are the following:—

1 Recruitment to the Indian Civil Service, the Indian Medical Service and the Indian Police; recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General in which the Governor-General is required to act in his discretion (i.e., Defence, Foreign Affairs, Ecclesiastical Affairs, Tribal Areas, etc.); and appointments concerned with Irrigation.

2. Borrowing money in England on behalf of India.

Thirdly, the Secretary of State being the Constitutional-adviser of the Crown, all powers vested in the Crown are, in practice, exercised on the recommendation of the Secretary of State who, therefore, has an important voice in:—

1. Making appointments of the Governor-General, the Governors, the Judges of the Federal Court and of High Courts and the Auditor-General;
2. Issuing Instrument of Instructions to the Governor-General and the Governors;
3. Signifying the Crown's assent to Bill reserved for the signification of His Majesty's pleasure thereon;
4. Disallowing Acts duly assented to by the Governors or the Governor-General;
5. Issuing Orders-in-Council;
6. Exercising the powers of the Crown in relation to Indian States; and

in other matters in which the Crown exercises powers.

The Secretary of State for India is, thus, the ultimate political authority who guides the destinies of India from day to day; the Governor-General and the Governors, powerful as they are within their own domains, are completely subordinate to him and have to adjust their own outlook and conduct to suit the wishes of this representative of the British Parliament. In the words of Prof. Harold J. Laski, "on ⁴⁵⁸issues of essential difference the keys of power are in London and not in Delhi.* Prof. K. T. Shah sums up the powers of the Secretary of State as follows:—

"On a general review of all these varied and substantial powers, the Secretary of State still stands out unmistakably as the most dominant authority in the Indian Constitution. His powers may not be so imposing in appearance as those of the Governor-General or the Provincial Governors. But these are merely his creatures, obedient to every nod from the jupiter of Whitehall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy; to the protection of British vested interests; to the safeguarding of Britain's imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislature, and even the appointments, payment or super-annuation of certain officers in the various Indian Services or Governments. He has, in fact, all the power and

* Foreword to *The Viceroy and Governor-General of India* by A. B. Rudra.

authority in the governance of India, with little or none of its responsibility *

4 THE COST OF HOME ADMINISTRATION

The expenses incurred on the salary of the Secretary of State and on the maintenance of his Council and staff were, for a long time, borne entirely by India. From 1858, when the office of the Secretary of State for India was first created, up to the year 1919, India unlike other colonies and dominions of the British Empire, paid the entire cost of the machinery of British control over India. This was naturally resented by the people of India who saw in it a discriminatory treatment resulting in huge financial loss to a poor country.

This glaring injustice was, however, partially remedied in 1919 when the salary of the Secretary of State for India was made payable out of British revenues, though the expenses of his office were still borne by India, Great Britain making a contribution of £150,000 a year towards its maintenance. Apart from affording a legitimate and overdue relief to Indian revenues, this reform had the additional result of compelling parliamentary interest in Indian affairs at least at the time when the salary of the Secretary of State was voted. The Government of India Act, 1935, has taken a step further by providing for the entire cost of the salaries of the Secretary of State and his staff and other expenses connected with his office, to be payable out of money provided by British Parliament; but to that India is to make an annual

* K. T. Shah, *Federal Structure* p. 336

contribution, to be settled between the Governor-General and the British Treasury, being equivalent to the expenses incurred by the Secretary of State in connection with the discharge of certain functions on behalf of the Federal Government.

It is a matter for congratulation that the principle of payment by Great Britain has been finally accepted. It is not unjust that India should pay for the administration of certain functions on its behalf by the Secretary of State, but the amount to be settled as payable by India may be so large as to result in no appreciable relief to India.

5. THE HIGH COMMISSIONER FOR INDIA

CREATION OF OFFICE. The office of the High Commissioner for India was provided for in the Government of India Act, 1919, and established by Order-in-Council of August, 1920. The main reason responsible for the provision of this office was the desirability of transferring certain agency functions, hitherto performed by the Secretary of State for India, in respect of purchase of materials and stores for the Government and Railway authorities in India. The Secretary of State, being the political chief of the Government of India, could not naturally be a convenient agent in this respect, and Indian opinion had become firm that the Secretary of State generally favoured British goods even when they were not the best or the cheapest available in the market. In order, therefore, to relieve the Secretary of State of his responsibilities in this connection, provision was made for the appointment of an officer directly subordinate to the Governor-General in Council. Moreover, each

Dominion of the British Empire maintained its High Commissioner for the performance, on its behalf, of political and commercial duties in London and as a symbol of its independent political status. A similar appointment for India was, therefore, regarded by some as a friendly gesture—a shadow of coming events in India

APPOINTMENT The High Commissioner was appointed by the Governor-General-in-Council, usually for a period of five years. His salary and allowances, as also the cost of his establishment in London, were made payable out of Indian revenues. He was made directly responsible for the discharge of his duties to the Government of India whose instructions he had to carry out.* At first the appointment was usually made from among the senior members of the Indian Civil Service, but recently a leading non-official of the Punjab has been appointed to the post.

FUNCTIONS The duties of the High Commissioner are primarily commercial and non political. His functions relate mainly to purchase of stores and material required by the governments and railways in India, for which he generally invites tenders. He also furnishes trade information and promotes the welfare of Indian Commerce. He has, however, certain other duties of a miscellaneous and ceremonial character. He looks after Indian students studying in Great Britain and secures for them facilities of admission, etc., in educational insti-

* By a Convention, the Secretary of State has relinquished his control of policy in the matter of purchase of Stores for India, other than Military Stores

tutions. At political conferences of an imperial or international character, and on other ceremonial occasions, he represents India, though the political subordination of India naturally detracts from his power and prestige as compared to High Commissioners of autonomous Dominions. Under the Government of India Act, 1935, he may, with the approval of the Governor-General, undertake agency functions on behalf of a Province or Federated State or Burma, in addition to his duties in connection with the business of the Federation.

RECENT CHANGE

An important change made by the Government of India Act, 1935, is

that the High Commissioner is to be appointed and his salary and allowances are to be fixed by the Governor-General *exercising his individual judgment*. This appears to be a retrograde step* as the Federal Council of Ministers may not be able to control the activities and policy of such a high functionary who spends several crores of rupees annually on the purchase of foreign goods. Moreover, whenever, the Governor-General exercises his individual judgment, he is responsible to the Secretary of State who may, thus, maintain his control over the High Commissioner and thereby defeat the very purpose of the creation of that office.

* A plausible justification for this change is given by the Joint Parliamentary Committee who say, "As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government, and as in any case he will be acting under the orders of the Governor-General in matters arising out of the Reserved Departments, it seems to us inappropriate that the appointment should be made by the Governor-General acting solely on the advice of Federal Ministers." Report, Vol. I, p. 241.

CHAPTER XIII

ADMINISTRATION OF JUSTICE

1 INTRODUCTORY

IMPORTANCE OF THE JUDICIARY

While the Legislature is concerned with passing laws and laying down general policy and the Executive looks to their enforcement, the function of the Judiciary is to interpret those laws and apply them so as to punish those who have committed a breach of the law and, in some cases, to restrain people who are about to commit a breach of the law. The importance of the judiciary can be realised from the fact that even the best of laws may fail to yield good government, unless there is an ever watchful judiciary to punish those who defy the law. The courts of justice are a guarantee of the maintenance of law and order, which is the primary function of every State. Hence, "the efficiency and integrity of the judiciary is an essential condition of public contentment and confidence in the administration."

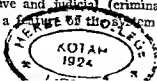
STANDARD OF JUSTICE

In order to discharge its duties efficiently, the judiciary should be competent and learned, honest and upright, impartial and independent. It should do even-handed justice not only as between one citizen and another, but also as between citizens and government officials. As Henry Sidgwick has put it, "in determining the rank

in political civilisation, no test is more decisive than the degree in which justice, as defined by law, is actually realised in judicial administration, both as between private citizens and members of Government." He further remarks, "When we know how a State dispenses justice, we know with some exactness the moral character to which it can pretend."

2. HISTORICAL BACKGROUND

REFORMS OF WARREN HASTINGS. The present organisation of the administration of justice in India is a product of gradual evolution made during the last century and a half. The British inherited the Muhammadan system of justice when they took over the *Diwani* of a few *parganas* in 1765. It was Warren Hastings who transferred the entire administration of Justice to English officers who were primarily concerned with the collection of land revenue. Each district was provided with a civil court, known as *Diwani Adalat*, and a criminal court known as *Faujdari Adalat*. The former consisted of the Collector of the district, assisted by an Indian Diwan, and the latter of a Kazi, a mufti and two maulvis, with the Collector merely watching the proceedings. A *Sadar Diwani Adalat* and a *Sadar Nizamat Adalat* were established to hear appeals from the district civil and criminal courts, respectively. The former was presided over by the Governor; the latter consisted of a Kazi, a mufti and a Maulvi. The combination of executive and judicial (criminal only) functions was thus a feature of the system as originally established.



REFORMS OF LORD CORNWALLIS The system underwent many changes in subsequent years. In 1774, the work of revenue collection was separated from administration of justice, and in 1780, a number of civil courts were established under English Civilian officers known as Superintendents. The judicial reforms of Lord Cornwallis effected certain far-reaching changes. He transferred back the control over criminal justice to the Collectors of the district, but deprived them of all civil jurisdiction. In order to supervise the work of the Collector-Magistrates, four Courts of Circuit were created and a Supreme Criminal Court known as Sadar Nizamat Adalat, presided over by the Governor-General, was established at Calcutta. The civil work was entrusted to special judges who had also power to try criminal cases. Appeals from them lay to four provincial Courts of Appeal which were identical with the Courts of Circuit. A Sadar Diwani Adalat, consisting of the Governor-General and his Council, was constituted as the highest court of appeal in civil matters.

LORD BENTINCK'S REFORMS The system of judicial administration as developed by Lord Cornwallis lasted for nearly half a century, though a few modifications were introduced. For example, in 1801, the Sadar Diwani Adalat and the Sadar Nizamat Adalat were reconstituted so as to consist of three or more judges belonging to the covenanted service. A notable change was made by Lord William Bentinck who abolished the Provincial Courts of Appeal and transferred their functions to the civil judges. He strengthened the position of the collectors by trans-

ferring to them the magisterial powers of the civil judges and was responsible for admitting Indians to high judicial posts. In the meantime, the subordinate judiciary was evolved out of Courts of Native Commissioners established by Lord Cornwallis and the Court of Sadar Amins established by Lord William Bentinck. The foundations of the present system were thus completely laid by the middle of the nineteenth century.

THE INDIAN HIGH COURTS.

The Indian High Courts Act of 1861 authorised the Crown to establish High Courts at Calcutta, Bombay and Madras in place of the old Adalat Courts. In 1886, a High Court was established at Allahabad and a Chief Court was established in Lahore. Under the Indian High Courts Act of 1911, High Courts were established at Patna, Lahore and Rangoon. A Chief Court was established in Oudh and Judicial Commissioner's Courts were established in the Central Provinces, Sind* and the North-West Frontier Province. Thus, practically every province in British India came to have a High Court or a court with more or less similar powers, being the highest judicial authority in the province, subject, in certain matters, to appeal to the Privy Council in London.

THE FEDERAL COURT.

There was, however, no All-India court competent to hear appeals from the High Courts in different provinces. The Government of India Act, 1935, provided for the establishment of a Federal Court which has since been in-

* Even when Sind was a part of the Bombay Presidency, it had its own Judicial Commissioner's Court which was in no way subordinate to the High Court at Bombay.

stituted It is competent to hear appeals from the High Courts in constitutional matters and in civil matters, if so authorised by the Indian Legislature Recently, the Judicial Commissioners' Courts in the Central Provinces and Sind have been raised to the status of Chief Courts

We shall now proceed to study the organisation of the judiciary as it exists at present

At present the Judicial system in India consists of three main parts —

- (1) The Civil and Criminal Courts in each province with a High Court at their head,
- (ii) The Federal Court, and
- (ii) The Privy Council

I. Organisation of Justice in the Provinces

1 HIGH COURTS

The organisation of the provincial judiciary differs in matters of detail from province to province, but the following main characteristics are generally found everywhere

Each Governor's province has a High Court of the head of its provincial judiciary, except Assam, Orissa, the Central Provinces, Sind and the North-West Frontier Province Assam is under the jurisdiction of the Calcutta High Court and Orissa is under the jurisdiction of the Patna High Court The North-West Frontier Province has a Judicial Commissioner's Court, while the Central Provinces and Sind have now Chief Courts The United Provinces have, besides a High Court at Allahabad, a Chief Court in

Oudh. The Chief Courts and the Judicial Commissioner's Court are given the status of High Courts for constitutional purposes, though in matters of legal procedure and powers they are inferior to High Courts. The Crown has the power to constitute a High Court or amalgamate two High Courts.

COMPOSITION. Every High Court consists of a Chief Justice and a number of Puisne judges appointed by His Majesty. The maximum number of judges to be appointed in each Court, the salaries and allowances of the judges and their rights of leave and pensions are all fixed by His Majesty in Council; and neither the salary of a judge, nor his rights and privileges in respect of leave of absence or pension, can be varied to his disadvantage after his appointment. Such salaries and allowances are declared charged on the revenues of the province and are, therefore, not subject to the vote of the legislature. The Federal and the Provincial Legislatures are prohibited from even discussing or criticising the conduct of the judge of a High Court in the discharge of his duties. Temporary vacancies of High Court judges may be filled by the Governor-General who may also appoint additional Puisne judges within the number prescribed by His Majesty in Council.

The following persons are eligible to hold the post of a High Court Judge:—

- (i) Barristers of England or Northern Ireland, Advocates of Scotland or Pleaders of Indian High Courts, of ten years' standing;

- (ii) Members of the Indian Civil Service of at least ten years' standing, who have, for at least three years, served as District Judges,
- (iii) Persons who have, at least for five years, held judicial office in British India not inferior to that of a subordinate judge or a judge of Small Causes Court

Thus, recruitment may be made from any of the three sources—the bar, the Civil Service and the bench, there being no rigid proportions of posts assigned to any category*. But no person can be appointed Chief Justice, unless, when first appointed to judicial office, he was a barrister, an advocate or a pleader and unless he has served for not less than three years as a judge of a High Court. Thus, members of the Indian Civil Service, unless they also happen to possess professional legal qualifications, would not be eligible for this office. Once appointed, the judge of a High Court cannot be removed from office, except by His Majesty, on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought, on any such ground, to be removed. Neither the Governor nor the Provincial Legislature has any control over their tenure. A High Court judge may, however, resign office at any time and is required to retire on attaining the age of sixty

* Formerly at least one-third of the number of judges had to be Barristers and another one-third members of the Indian Civil Service so that the room for recruitment from Pleaders of Indian High Courts and the lower judiciary was considerably restricted

FUNCTIONS AND
POWERS.

The High Courts, being the highest civil and criminal courts in the province, are primarily concerned with hearing appeals from the lower courts, but the High Courts at Bombay, Madras and Calcutta also exercise *original* jurisdiction in addition to the *appellate* jurisdiction enjoyed by others. In civil matters, their original jurisdiction extends to cases involving amounts of Rs. 2,000 or over and in criminal matters, their original powers extend to trying cases committed to them by Presidency Magistrates. The appeals from lower courts to the High Court are governed by rules laid down in the Civil Procedure Code. The High Courts also supervise cases in lower courts, issue general rules and forms of proceedings, settle fees, call for returns and have the important power to transfer cases from one court subordinate to them to another or to themselves. They have, however, no jurisdiction in matters connected with land revenue.

2. INFERIOR COURTS

Below the High Court in each province come the two branches of Civil and Criminal justice. Immediately subordinate to the High Court in matters civil is the District Court and, in matters criminal, the Sessions Court; and below each of them is the subordinate judiciary and the lower magistracy, respectively.

THE DISTRICT
COURT.

The District Court is presided over by the District Judge. Generally, one such court exists in every revenue district. The judges are recruited either from among the members of the Indian Civil Service, or by promotion from the subordinate judiciary, or directly from among the

members of the bar of five years' standing. Their appointments, postings and promotion are made by the Governor exercising his individual judgment but after consultation with the High Court. The functions of the District Court are both appellate and original. It hears appeals in certain cases decided by the subordinate judges and also tries original civil cases involving large amounts. The appeals from the District Court lie to the High Court, as prescribed by rules of the Code of Civil Procedure.

SUB JUDGES.

Below the District Court is the inferior judiciary consisting of *subordinate judges* of the first or second class, having only original powers of trying suits involving certain prescribed amounts. Their appointments are made by the Governor on the recommendation of the Public Service Commission of the province, which also prescribes the necessary standard of qualifications required for the posts. Their posting, promotion and granting of leave are in the hands of the High Court. A subordinate judge is generally found in each of the two or three divisions of a district. The bulk of the petty civil cases is disposed of by him, subject to appeal to the District Court.

SMALL CAUSES COURTS

In capitals of provinces, there are *Small Causes Courts* to relieve the High Courts of petty civil cases. They have only original powers to try suits involving amounts not exceeding Rs 2 000 in the case of those established in the three Presidency towns and Rs 500 in the case of others.

**REVENUE
COURTS.**

In order to deal with matters connected with land revenue, there are separate courts known as *Revenue Courts*. The Collector of the District constitutes the chief revenue court in the district and appeals from his decisions lie to the Divisional Commissioner.

**THE SESSIONS
COURT**

The Sessions Court consist of a Sessions Judge and Additional Sessions Judges appointed in the same way as District Judges. The functions of the Court relate to criminal matters and the court has appellate as well as original powers. It hears appeals from the lower magistracy, in accordance with the provisions of the Criminal Procedure Code. It has original jurisdiction over cases of grave nature committed to it by the lower magistrates authorized in this behalf. Appeals from the Sessions Court lie in certain cases to the High Court. A sentence of death pronounced by a Sessions Court must be confirmed by the High Court. In Bombay province the officials of the District and Sessions Judges are held by the same person who possesses both civil and criminal powers.

**ORGANISATION
OF THE LOWER
MAGISTRACY.**

Below the Sessions Court are Magistrates of the first, second and third class. A first class magistrate has powers of sentencing a person to imprisonment for a period not exceeding two years or inflicting a fine not exceeding Rs. 1,000. A second class magistrate can sentence a person to imprisonment for a maximum period of six months and inflict a fine not exceeding Rs. 200. A third class magistrate can sentence a person to imprisonment for one month or fine him up to Rs. 50. A peculiar feature, however,

of the organisation of the lower magistracy is that the revenue officials of the district, whose duties are primarily executive, also exercise magisterial powers. Thus the Collector of the District is also the District Magistrate being a magistrate of the first class, the Assistant and Deputy Collectors are Sub-Divisional Magistrates being also magistrates of the first class, the Mamlatdars* and their head clerks have generally second or third class powers.

THE DISTRICT MAGISTRATE

The District Magistrates, besides having the powers of a first class magistrate, can also hear appeals from cases decided by second or third class magistrates within their territorial jurisdiction. Further, they distribute work among the courts of the lower magistrates and transfer cases from one court to another or to themselves. They exercise large powers of supervision over the lower magistrates and can call for returns. They may also authorize any sub-divisional magistrates to hear appeals from second or third class magistrates, or distribute work among them, or to exercise general supervision over them.

HONORARY MAGISTRATES

While the bulk of the magisterial work is done by these stipendiary magistrates who are officials regularly paid by the Government, there are also Honorary Magistrates recruited mainly from retired judges and other Government officials or from the landed aristocracy. In some villages the headman is given some petty judicial powers. In some provinces, the Village Pan-

* The officers in charge of a Taluka or Tahsil are known also as Tahsildars, Mukhtarkars etc.

chayats have been given similar powers to try minor cases arising in the village.*

PRESIDENCY MAGISTRATES.

In the Presidency towns, corresponding to the Small Causes Courts on the civil side, there are Presidency Magistrates who try minor offences and commit those involving serious ones to the High Court, thereby relieving the latter of much unimportant and preliminary work.

3. JURORS AND ASSESSORS

INTRODUCTORY

The system of trial by jury has been adopted in India in all trials of original criminal cases before the High Court and in some criminal cases before other courts. This system has been borrowed from England where trial by jury has, for a long time, been regarded as the bulwark of English liberty. The part that it has played in English constitutional development has made it a cherished privilege of Englishmen. It is looked upon as a guarantee of justice being administered in a popular way.

THE JURY.

In India, a jury consists of nine persons in all trials before the High Court, and, in other trials, of such uneven number not exceeding nine, as may be fixed by the Provincial Government. The jury is only concerned with deciding questions of fact, as distinguished from questions of law.† The verdict of the jury is normally binding on the court, but the Code of Criminal Procedure lays down exact rules in case of disagreement between the

* The Bombay Village Panchayats Amendment Act, 1939, has made the constitution of a Judicial Bench in every village, where a Panchayat exists, compulsory. The Bench is given some judicial powers.

† This distinction is not rigid in practice.

judge and the jury Broadly speaking, it may be said that when a judge agrees with the majority verdict of a jury, he can give a judgment in accordance with that verdict, in the case of High Courts this majority must include at least six jurors * If a Sessions Judge disagrees with the verdict of a jury, he is to forward the case to the High Court

THE ASSESSORS In mofussil courts where it is difficult to empanel a jury, trials before Sessions courts are conducted with the aid of three to four Assessors Their verdict is not at all binding on the judge

REMARKS Trial by jury, or with the aid of assessors, seems to have outlived its usefulness The administration of justice in modern times calls for an expert knowledge of legal principles and procedure which laymen empanelled on a jury can rarely possess With the permanence of the tenure of the judges, there is no longer any fear of the judges, being dominated by the Government; on the contrary, trial by jury may make for popular administration of justice, which may not always be desirable

4 TRIAL OF EUROPEAN SUBJECTS

THEIR PRIVILEGED POSITION The European British subjects in India have, from the beginning, claimed certain special privileges in matters of criminal procedure Any attempt to place them on the same level as other British subjects was, for a long time, keenly resented by them When in 1883, the Government proposed to empower Indian Magis-

* Thus a verdict given by a majority of five against four would not do

trates to try European British subjects, the latter raised a storm of protest and in 1884 the Government was compelled to compromise the position by conceding to them the right to claim a mixed jury, a jury not less than half of whose members were Europeans. Since 1923, the British Indian subjects have also been given right to claim a mixed jury.* In matters of procedure in criminal courts, the provisions relating to the trial of European criminals differ in many respects from those governing British Indian subjects. No Bill can be moved in the Federal or Provincial Legislature if it affects the procedure for criminal proceedings in which European British subjects are concerned, unless the Governor-General gives his previous sanction.

5. COMBINATION OF EXECUTIVE AND JUDICIAL POWERS

It will be noticed that a prominent feature of the organisation of justice in criminal matters is the combination of Judicial and Executive functions in the hands of the same officers. No such combination exists on the civil side where the subordinate judges devote themselves purely to judicial duties. Even on the criminal side, the combination of functions is not found in the higher rungs of the ladder; the High Courts and the Sessions Courts are concerned only with the administration of justice. It is when we come down to the District Magistrate and his subordinates that we see that officials, whose primary duties relate to collection of land revenue and maintenance of order, are also charged with magisterial functions.

* A mixed jury in their case means a jury not less than half of whose members are British Indian Subjects.

OBJECTIONS
AGAINST
COMBINATION

This combination of executive and judicial powers is objectionable on

the following main grounds *Firstly*, it militates against the elementary principles of justice, in as much as a fair and unbiassed trial cannot always be expected at the hands of an executive official whose outlook and judgment are bound to be coloured by a mass of opinions and prejudices acquired during the course of his administrative duties It is not unlikely that instead of weighing evidence in a purely judicial spirit, he may be carried away by other considerations including the need for strengthening himself in the performance of his executive duties The citizen has thus no guarantee that he would always get justice. his liberty is, therefore, at stake *Secondly*, as most of the criminal cases are instituted on complaints made by the executive police officers and other government servants it is hardly fair that members of the executive should sit as judges They would naturally be influenced by extraneous considerations, and it would, in theory, amount to making one of the parties to the dispute also a judge This would happen specially where an accused is not on good terms with the officials of a locality In such cases justice administered by the executive may be little more than a mere farce *Thirdly*, the lower magistracy cannot, under this system, show any independence of judgment as it dare not have open differences with other magistrates in the district who may be superior to them in their executive capacity An undesirable tendency on the part of the lower revenue officials to please the higher authorities who may secure for them promotion and other favours cannot,

therefore, be completely eliminated. *Fourthly*, the mental equipment required for the performance of judicial duties is not often the same as that required for the efficient discharge of administrative duties. The one requires a cool and unbiassed judgment, capacity to sift and weigh evidence and expert knowledge of law and procedure; while the other requires a strong will, power of organisation and vigilance and capacity to take quick decisions. To look for these qualities in the same person is to expect the impossible from human nature.

IN DEFENCE OF COMBINATION.

In view of the above objections, it is not surprising that there has been in this country a long and sustained opposition to the principle of combination of powers. But the system has been defended on two practical grounds, the need for concentration of authority and economy. It is argued that "there is a side of magisterial work which must be regarded as preventive rather than as punitive, and that it is of great importance especially in a country where crime is unfortunately so rife and where breaches of the peace of the most serious character may arise at the shortest notice, that the head of the district administration should be sufficiently armed to be able to deal effectively with the danger of upheaval and outbreak."* In other words, the magisterial powers vested in the Collector enable him to assert his authority with greater quickness and vigour than would be otherwise possible. Moreover, the average Indian villager is more amenable to a single officer with large powers than to a multipli-

* Simon Commission Report, Vol. I, p. 233

city of local officials with divided authority Separation of judicial from executive functions is objected to on financial grounds as it would necessitate the appointment of separate officers to do magisterial work

CONCLUSION The first argument against separation has value which must at once be recognised, but with the gradual raising up of the level of administrative efficiency and the inculcation of the spirit of obedience to law, it is bound to lose much of its force Moreover, any possible loss on this side must be viewed side by side with a much greater gain that would accrue in the shape of a purer administration of justice The other objection relating to finance is, however, open to dispute Provincial governments have not carefully investigated the possibilities of minimising the additional expenditure necessary in the event of separation It is the considered view of many able lawyers and judicial officers that a practical scheme could be framed whereby the separation may be effected without saddling the country with additional cost It was therefore, surprising that the ministries in the different provinces with the exception of the United Provinces and Sind gave no serious thought to the question of separation and some of them actually defended the system The principle of combination of these powers is so glaringly defective that the question of its abolition is merely a matter of time *

* The principle of separation was accepted on behalf of the Central Government by Sir H Adamson in the Imperial Legislative Council in 1908

II. The Federal Court.

ITS NECESSITY A federal constitution necessitates the establishment of a supreme judicial tribunal of the highest independence to adjudicate upon, and decide, all legal disputes between the federal units and the Centre. Questions relating to the interpretation and the construction of the constitution are bound to arise when, as in a Federation, there is a pre-determined and generally rigid distribution of powers between the Federation and its constituent units. And it is only fair that such questions should be decided by an independent body in no way subordinate either to the Federal or to the Provincial Government. It is for this reason that a federal constitution logically implies the creation of a supreme or federal court which may act as an "interpreter and guardian of the constitution and a tribunal for the determination of dispute between the constituent units of the Federation."*

APPOINTMENT, TENURE AND SALARIES. In accordance with the provisions of the Government of India Act, 1935, the Federal Court was established in India in October 1937. It consists at present of a Chief Justice and two other judges. The number of judges to be appointed to the court is to be such as His Majesty may deem necessary, but this number shall not exceed six, unless an address, praying for the increase of the number is presented by the Federal Legislature to the Governor-General for submission to His Majesty. No case is to be decided by less than three judges. Every judge of the

* Joint Parliamentary Committee Report, Vol. I. p. 123

Federal Court is appointed by the Crown, and continues in office until he attains the age of sixty-five years. He has the option to resign his post at any time and can be removed from office by His Majesty on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.* No right of presenting an address for the removal of any judge is given to the Federal Legislature which is even prohibited from discussing the judicial conduct of a judge. Nor can the Governor-General suspend or remove any judge, though he has the power to temporarily appoint any of the judges to the post of the Chief Justice of India, pending permanent arrangements being made by His Majesty. The salaries, allowances, rights of leave and pension, etc., of the judges are fixed by His Majesty in Council and cannot be varied to their disadvantage after their appointment. Their salaries are declared *charged* on the revenues of the Federation and are not, therefore, subject to the vote of the Federal Legislature which may only discuss the same. Their manner of appointment, fixity of tenure and guarantee of salaries are all calculated to place the judges above the political influence of any authority in India.

QUALIFICATIONS. In order to qualify for the appointment as a judge of the Federal Court, a person must be one of the following:—

* The salary of the Chief Justice has been fixed at Rs. 7,000 p.m. and that of the Puisne Judges at Rs. 5,500 p.m.

- (i) A judge of a High Court in British India or in a Federated State, for at least five years;
- (ii) A Barrister of England or Northern Ireland, or an Advocate of Scotland or an Indian Pleader of at least ten years' standing.

Slightly higher qualifications are prescribed for the Chief Justice, whose standing at the bar—whether as Barrister, Advocate or Pleader—should be at least fifteen years or who may have been a judge of a High Court in British India or in a Federated State of at least five years' standing; provided that when he was first appointed to the office of a judge, he was a barrister, advocate or pleader. This provision is intended to exclude the members of the Indian Civil Service who do not possess professional legal qualifications from appointment as Chief Justice.

MEETINGS.

The Federal Court *is to sit in Delhi* and at such other places as the Chief

Justice of India may, with the approval of the Governor-General, from time to time appoint. It is intended to hold the meetings in rotation in important places like Bombay, Calcutta and Madras, in addition to the Sessions at Delhi.

The functions of the Federal Court are of two kinds:—

- (i) To decide purely federal issues, and
- (ii) To hear appeals in civil matters, from provincial High Courts.

FUNCTIONS AND POWERS.

The decision of purely federal issues is the legitimate and indispensable function of the Federal Court, and its functions and

powers in this behalf are of statutory origin, being clearly laid down by the Government of India Act, 1935, and cannot be altered by any authority in India, whereas its power to hear appeals in civil matters from the High Courts in British India is a matter of convenience and this power can be conferred on it by an Act of the Federal Legislature *

The federal functions of the Court can be classified under three heads, Original, Appellate and Consultative

1 *Original* The Federal Court has an *exclusive*, original jurisdiction in case of a dispute between any two or more of the following parties, the Federation, any of the provinces and any of the Federated Native States, in so far as the dispute involves any question of law or fact (relating to the constitution or not), on which the existence or extent of a legal right depends

2 *Appellate*. The court hears appeals from High Courts in British India or in Federated States if the High Court certifies that a question relating to the interpretation of the constitution or any Order in Council or an instrument of Accession is involved, whoever may be the parties to that dispute

3 *Consultative* If at any time it appears to the Governor-General that a question of law of great public importance has arisen, or is likely to arise and that it is expedient to obtain the opinion of the

* The Federal Legislature may by Act provide that in certain civil cases appeals shall lie from the High Court of a province to the Federal Court but no such appeal shall lie unless the amount or value of the subject matter of the suit is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act or unless the Federal Court gives special leave to appeal

Federal Court upon it, he may refer the matter to the court which may give its decision. This advisory function of the Court is intended to clear doubts and misconceptions by making the legal position quite clear. It may also prevent unnecessary hardship which may be caused if things were allowed to take their own course. It may, however, be often vexatious, or inconvenient for the court to pronounce opinions in the abstract, without reference to any particular case that may have arisen. There is also a very remote danger that the Governor-General may, be prior reference, secure an interpretation favourable to himself and thus prejudice the course of justice.

**JUDGMENT AND
APPEALS.**

The judgments of the Federal Court are declaratory. It has no means at its disposal to enforce its judgments. But all authorities, civil and judicial, throughout the Federation are required to act in aid of the Federal Court. Appeals from the judgments of the Federal Court lie to His Majesty in Council in two cases only:—

- (i) when the judgment is given by the Federal Court in exercise of its original jurisdiction in any dispute which concerns the interpretation of the constitution, and
- (ii) in any other matter, by the leave of the Federal Court or of His Majesty in Council.

Thus, ordinarily, the appellate decisions of the Federal Court in civil and constitutional matters, would be final.

CONCLUSION

From the nature of the powers conferred on the Federal Court, it may be observed that its functions are *not purely federal* i.e., not merely concerned with the Federation and its units. It may have the power of hearing civil appeals conferred on it by an Act of the Federal Legislature. Nor can it be called a purely *constitutional* court taken up entirely with the interpretation of the constitution, for any dispute between the federal centre and a federal unit or between two or more of the federal units which involves a legal question whether relating to the constitution or not, would be under the exclusive original jurisdiction of the Federal Court. It is definitely *not a Supreme Court or an All-India Court of Appeal* in the sense in which each High Court would be supreme in its province since it has no jurisdiction over appeals from High Courts in criminal cases and since some of its decisions are appealable to the Privy Council, even without its leave.

III The Privy Council

The Judicial Committee of the Privy Council is the highest judicial tribunal for the British Empire and, as such, is the apex of the administration of justice in this country. It has no original jurisdiction but hears appeals from the decision of the High Courts in British India, both in civil and criminal cases. The civil cases are appealable to the Privy Council provided the amount involved is not less than Rs 10 000, in criminal cases, the appeal lies to the Privy Council only when a question of law, as distinguished from a mere question of fact, is involved.

With the introduction of the Federal Court, appeals from decisions in all cases involving disputes about the interpretation of the constitution will lie from the High Court to the Federal Court; the Act of 1935 also authorises the Indian Legislature to empower the Federal Court to hear appeals from the High Courts in British provinces involving a minimum amount of Rs. 15,000; to that extent therefore, the appellate powers of the Privy Council are curtailed. But since the decisions of the Federal Court are, as explained above, appealable to the Privy Council, the legal supremacy of the latter, as the highest, judicial body over India, remains inviolate.

CHAPTER XIV

THE SERVICES

1 INTRODUCTORY

ROLE OF THE SERVICES

The Central and Provincial Governments can, from their respective

head-quarters, exercise only a general superintendence and control over the administration of their affairs; the task of carrying on the actual administration from day to day falls on a large body of Government servants of various ranks and grades, usually summed up in the term Services. The moral tone of the administration is determined largely by the mental equipment and traditions built up by the Services. The need for an efficient, honest and sympathetic staff, manning the different departments throughout the length and breadth of the country, cannot, therefore, be over-estimated. In order, however, to secure such Services, it is necessary to provide for their recruitment by an impartial and experts body acting on grounds of merit alone. It is further necessary to guarantee them security of tenure, adequate salaries, fair chances of rise and reward for exceptional merit. Favouritism, nepotism, wrongful dismissals and low salaries should be completely eliminated. The Government should however, maintain a careful supervision over the activities of its servants so as to put down all cases of corruption, insubordination or neglect of duty.

2. GROWTH OF THE SERVICES UPTO 1919

THE FIRST STEPS. The history of the organisation of Services in India dates from 1772 when the East India Company decided to stand forth as *Diwan* and to take over the administration of the three provinces ceded to them, into their own hands. The native servants were replaced by European officials known as Collectors who were appointed by Warren Hastings to supervise the collection of revenue and the administration of justice. Lord Cornwallis put these officers on a permanent basis by including them in a "covenanted" service. All superior posts in the administration were reserved by the Act of 1793 for the members of this service, and in order to equip them for their task, they were required to undergo training in Haileybury College, started in England in 1806. The nominations to this service were made by the Court of Directors who thus came to wield large powers of patronage.

EXCLUSION OF INDIANS The institution of the Covenanted Service led to the exclusion of Indians from all positions of importance. This was naturally resented in India but, all that was done to respect Indian-sentiment was to include the following provision in the Charter Act of 1833:—

"No native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent colour, or any of them, be disabled from holding any place, office, or employment under the said company." This clause, only declared that Indians were not disqualified, or debarred, from holding positions of

responsibility, but nothing was done to pursue any definite policy of appointing Indians to higher posts. This "wise benevolent, that noble clause," as Macaulay referred to it, remained, therefore little more than a pious resolution. In practice, Indians were excluded from the Covenanted Service and were employed only as clerks and subordinates. In 1853 the power of nomination to the Covenanted Service was taken away from the Directors and the appointments were thrown open to competition, but as the examinations were held in London, Indians found it impossible to compete with students of British Universities on terms of equality. Lack of higher educational facilities in India, difficulties of distance and social taboos such as long sea voyage sufficed to keep Indians out of the way. In 1870, the principle of nominating a few Indians without asking them to stand the competitive test, was adopted to secure every year one or two persons for the judicial branch of the Civil Service. In 1879, this principle was extended to secure recruits for the administrative branch too, but candidates of requisite qualifications could not be had in adequate numbers. This experiment was therefore dropped, and a Commission was appointed to go into the question. The Commission reported in 1887 and recommended the division of the Indian Civil Service into three branches: the Indian Civil Service, the Provincial Civil Service and the Subordinate Civil Service. The recruitment to the Indian Civil Service was to continue to be made in England, but recruitment to the other two Services was to be made in India, this was expected to give a chance to Indians to hold posts of some responsibility.

INCREASING ASSOCIATION OF INDIANS.

The question of the Services was thoroughly examined in 1912 by the Royal Commission presided over by Lord Islington. The Commission submitted its report as late as 1915; in the meantime England had gone to war and the publication of the report was delayed till 1917. Before Government could act on its recommendations, the famous announcement of August 1917 was made by the Secretary of State for India, in which the policy of "increasing association of Indians in every branch of the administration" was accepted. In order to implement this policy, the Montague-Chelmsford Report in 1918 recommended recruitment to the Indian Civil Service to be made in India in addition to recruitment in London. Since 1922, a certain proportion of recruitment to the Indian Civil Service is made by competitive examinations held in India.

3. THE POSITION OF THE SERVICES, AFTER THE REFORMS OF 1919

PREMATURE RETIREMENT OF EUROPEAN, SERVANTS.

The introduction of Reforms of 1919 produced apprehensions among the European members of the Services who could not reconcile themselves to a new order in which, instead of formulating policy, they would have merely to carry out orders issued by Indian Ministers in charge of "transferred" departments. They made an insistent demand for statutory safeguards and asked for facilities to retire. Accordingly, the Secretary of State in Council adopted a scheme under which All-India officers, selected for appointment before 1st January, 1920, and serving under any Provincial Government, were allowed to retire before they had completed their normal full service,

on a pension, proportionate to their length of service. A large number of officials availed themselves of this opportunity, and by 1924, no less than 345 officers had prematurely retired, many of them were senior officers whom India could ill spare. Among the factors that were responsible for this exodus must be mentioned the persistent criticism of official action in the new provincial legislatures, and the non-co-operation movement of 1920-22 which 'involved officers and their families in personal discomfort and even in serious danger,'* and the rise of prices during the post-war years which made it difficult for them to meet their liabilities in connection with their families living in England.

THE LEE COMMISSION

This had the natural effect of discouraging suitable young men in England from taking up a career in India. It was, therefore, a problem for the authorities to attract persons of real ability. On the other hand, the introduction of Reforms led to a legitimate demand in this country for rapid Indianisation of the Services. It was further contended that the recruitment and control of any Services by the Secretary of State should now cease. These difficulties led to the appointment in 1923 of the Royal Commission on Superior Civil Services in India, of which Lord Lee was chairman. The Commission reported in 1924. Its recommendations which were accepted and acted upon by the Government are briefly summarised as follows †

1 *Classification and Recruitment.* The Commission recommended that the Indian Civil Service, the

* Simon Commission Report Vol I p 266

† See Simon Commission Report Vol I p 270

Indian Police Service, the Indian Forest Service and the Irrigation Branch of the Indian Service of Engineers should continue to be All-India Services, recruited by the Secretary of State. Recruitment to the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineers, the Indian Veterinary Service and the Indian Medical Service (Civil) was henceforward to be stopped and officers required for these departments were to be recruited by the Provincial Governments and were to constitute Provincial Services; the officers already appointed to these Services were allowed the rights and privileges of the members of All-India Services.

2. *Increased Rate of Indianisation.* The Commission expected appointments to the Provincial Services to be confined almost entirely to Indians and therefore put no restrictions on their recruitment. But, with regard to all-India and Central Services, it laid down certain proportions in which future recruitment of Indians was to be made.

For the Indian Civil Service, it recommended that 20 per cent. of the Superior posts should be filled by the appointment of provincial service officers to "listed posts" and that direct recruits in the future should be Indians and Europeans in an equal degree. On this basis, it calculated that by 1939 half of the service would be Indian and half European, allowing for Indians in listed posts.

For the Indian Police Service, direct recruitment was to be in the proportion of five Europeans to three Indians; allowing for promotion from the Provincial Service to fill 20 per cent. of all vacancies; this would

produce, it was estimated, a personnel half Indian and half European by 1949

✓ For the Indian Forest Service the recruitment proposed was 75 per cent. Indian and 25 per cent European, and for the Irrigation Branch of the Indian Service of Engineers, the Commission recommended direct recruitment of Indians and Europeans in equal numbers with a 20 per cent reservation of appointments to be filled by promotion from the provincial service

3 *Increase in Emoluments and Privileges* The Commission recommended large financial concessions to European members of the Services Increased overseas allowances, return passages to England for themselves and their families, enhanced pensions of those members of the Indian Civil Service who had attained the rank of Executive Councillors or Governors, larger Government contributions to the Family Fund for Civil Servants, repatriation at Government expense of the family of an officer who died in India, etc were among the financial privileges extended to them. British officers employed in the "Reserved" field were given the right to retire on a proportionate pension, if at any time the department in which they were employed should be transferred to the control of Ministers responsible to the legislature They could exercise this option within one year from the date of transfer to the control of Ministers It further recommended that the position of the All-India Services should be safeguarded by the establishment of a Public Service Commission

THE PUBLIC SERVICE COMMISSION.

The Government of India Act, 1919, had provided for the establishment of a Public Service Commission, consisting of not more than five members, of whom one should be chairman, appointed by the Secretary of State in Council. It was to discharge in regard to recruitment and control of the public services in India, such functions as might be assigned to it by rules made by the Secretary of State in Council. The Lee Commission recommended its immediate establishment with a view to satisfying the demand on the part of Indians for recruitment in this country and with a view to providing protection for the existing services in India. A Public Service Commission was accordingly established in 1925. In 1929, a Public Service Commission was also set up in the province of Madras under an Act of the provincial legislature.

The Present Organisation of the Services**1. CLASSIFICATION AND RECRUITMENT**

The Civil Services in India are classified under three main divisions:—(1) The All-India Services; (2) the Provincial Services; and (3) The Central Services.

ALL-INDIA SERVICES.

The All-India Services consist of the Indian Civil Service; the Indian Police; the Forest Service; the Service of Engineers; the Medical Service (Civil); the Educational Service; the Agricultural Service; and the Veterinary Service. But recruitment by the Secretary of State to the last mentioned four services has ceased since 1924, and these services have now been provincialised. The

members of the All-India Services, like those of the Provincial Services, work under the Provincial Governments but they are all appointed by the Secretary of State who is the final authority for the maintenance of their rights. They are liable to serve anywhere in India but they ordinarily pass their whole career in the Province to which they are assigned on their first appointment.

THEIR APPOINTMENT

Appointments to the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police are made by the Secretary of State who may also make appointments to the Irrigation Branch of the Indian Service of Engineers. These appointments are made by him on the recommendations of the British Public Service Commission in England and the Federal Public Service Commission in India, both of which conduct competitive examinations and interview candidates for the purpose. Since 1936, the recruitment of British candidates to the Indian Civil Service is made by nomination of Honours graduates of any British University. This practice is defended on the ground that many candidates, otherwise suitable find it difficult to take the competitive examination soon after sitting through their Honours Examination. Due to the recent outbreak of war, the principle of nomination has been partially extended to Indian candidates recruited in London. The respective strength of the above Services are to be such as the Secretary of State may prescribe, and he shall every year submit to each House of Parliament a statement of such appointments and the vacancies therein. The

Governor-General has the duty to keep the Secretary of State informed as to the working of the system and to make recommendations for its modification.

PROVINCIAL
SERVICES.

The Provincial Services (including the Subordinate Services) "covers the whole field of provincial civil administration in the middle grades." Appointments to these Services are made by the Provincial Governments who control their conditions of service.

CENTRAL
SERVICES.

The Central Services are concerned with matters under the direct control of the Central Government. Apart from the Central Secretariat, the more important of these Services are the Railway Services, the Indian Posts and Telegraph Service and the Imperial Customs Service. To some of these the Secretary of State makes appointments, but in the great majority of cases, their members are appointed and controlled by the Government of India. In framing the rules for the regulation of recruitment to posts in the customs, postal and telegraph services, due regard must be had to the past association of the Anglo-Indian Community with regard to the said services. Appointments to Railway Services are, under the new constitution, to be made by the Federal Railway Authority which is also required to pay due regard to the past association of the Anglo-Indian Community with railway services in India and to give effect to any instructions which may be issued by the Governor-General for securing, so far as practicable, to each community in India a fair representation in the railway services.

ELIGIBILITY FOR OFFICE

Ordinarily only a British subject is eligible to hold any office under the

Crown in India, except temporarily. But, the Ruler or a subject of a Federated State is eligible to hold any civil office under the Federal Government. With regard to Rulers and Subjects of States not federated or natives of tribal areas or of territory adjacent to India, powers are given to the Secretary of State, the Governor-General and the Governors to declare any person eligible to hold office in the services recruited by them. Women are generally eligible for all offices but subject to exclusion by the Governor-General, Governor or the Secretary of State in regard to Services recruited by each.

2. PUBLIC SERVICE COMMISSIONS

ESTABLISHMENT The recruitment of the Services by the Government of India and the Federal Railway Authority is to be made on the recommendations of the Federal Public Service Commission which has now taken the place of the Central Public Service Commission established in 1925. Appointments to Provincial Services are made by local Governments on the recommendations of Provincial Public Service Commissions established under the Government of India Act, 1935. The Act makes the establishment of Public Service Commissions in the Provinces obligatory, though two or more provinces may agree to have a joint Public Service Commission. This facility has been availed of by many provinces.* The Public Service Commission of one province may also serve the needs of other provinces, and the Federal Public Service Commission

may, with the approval of the Governor-General, agree to serve the needs of a province.

COMPOSITION.

The Chairman and members of the Federal Public Service Commission are appointed by the Governor-General in his discretion, and those of the Provincial Commission by the Governor in his discretion. At least one-half of the members of every Public Service Commission should be persons who have put in ten years service under the Crown in India. The number of members of the Commission, their tenure of office and their conditions of service are fixed, in case of the Federal Commission by the Governor-General in his discretion, and in the case of a Provincial Commission by the Governor in his discretion. To ensure impartiality, the chairman of the Federal Public Service Commission is debarred from further employment in India; the Chairman of a Provincial Commission is eligible only for appointment as Chairman or member of the Federal Commission or as Chairman of another Provincial Commission. Members of the Commissioners are not eligible for any other appointment without the approval of the Governor-General in his discretion or the Governor in his discretion, according as the appointment relates to a Federal or Provincial matter. The expenses of the Commissions including salaries, allowances and pensions payable to the Chairman; members and staff are charged on the revenues of the Federation in the case of the Federal Commission, and on the

* Joint Public Service Commissions have been established for (1) Bombay and Sind; (2) Punjab and North-West Frontier Province; (3) Central Provinces Bihar and Orissa, (4) Bengal and Assam. Madras and the United Provinces have their own separate commissions.

revenues of the province in the case of a Provincial Commission.

FUNCTIONS

The Public Service Commissions conduct examinations and interview candidates for appointment to Services. They have a right to be consulted on all matters relating to methods of recruitment to civil services, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments promotions or transfers, on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, on any claim by a government servant for costs incurred by him in defending legal proceedings instituted against him in respect of acts done by him in the discharge of his duties, and on any claim for the award of a pension in respect of injuries sustained by a person while on duty. The Federal or the Provincial Legislature may with the previous sanction of the Governor-General or the Governor, as the case may be, extend the functions of the Federal or the Provincial Commission. The Public Service Commissions have no right to be consulted as to the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a province.

2 CONSTITUTIONAL SAFEGUARDS FOR THE SERVICES

DEMAND FOR SAFEGUARDS

When the constitutional changes which finally took the shape of the Government of India Act, 1935, were being considered,

the Services felt considerably nervous about their position under the new regime and made insistent demands for statutory safeguards to secure their rights and privileges. Public opinion in India was averse to such claims as it was felt that Responsible Government could not be firmly established if the Services were beyond the control of Ministers. But, the view point of the Services was finally adopted. The safeguards provided for them under the new constitution may be classified under three broad heads :—

1. Protection to Officers against Judicial Proceedings.
2. Statutory Safeguards as regards conditions of Service.
3. Special Responsibility of the Governor-General and the Governors.

**PROTECTION
AGAINST JUDI-
CIAL PROCEEDINGS**

No proceedings, civil or criminal, can be instituted against public servants in respect of any act connected with the execution of their duties, except with the consent of the Governor-General in his discretion, or of the Governor in his discretion, according as the person is employed by the Federal or Provincial Government. But, if such proceedings have already been instituted, they shall be dismissed, unless the Court is satisfied that the acts complained of were not done in good faith. In that case, the Federation or the Province must bear the costs not recovered from the plaintiff. Where a civil suit is instituted against a public officer in respect of any thing done in his official capacity, the whole or any part of the costs incurred by him and of any damages

or costs ordered to be paid by him shall, if recommended by the Governor General or the Governor, be charged on the revenues of the Federation or of the Province as the case may be. Only the Governor-General and the Governors exercising their individual judgment can sanction prosecutions of certain officials specially protected by the Code of Criminal Procedure. No Bill or amendment curtailing such protection afforded to public servants can be moved in the Federal or Provincial Legislature, without the previous sanction of the Governor-General, or the Governor, in his discretion

STATUTORY SAFEGUARDS.

The following statutory safeguards are provided for the Services by the Government of India Act, 1935. These fall into two divisions: General Safeguards, and Special Safeguards for Officers appointed by the Secretary of State for India.

(a) GENERAL SAFEGUARDS

(1) No person can be dismissed from service by an authority subordinate to that by which he was appointed.

(2) No person can be dismissed or reduced in rank until he has been given a reasonable opportunity to show cause against the action proposed to be taken in regard to him.

(3) The salaries, allowances, pensions, payable to persons appointed before 1st April, 1924 to a post classified as superior shall be charged on the revenues of the Federation or the province, as the case may be.

(4) No civil post, which immediately before the introduction of the provincial part of the new constitution was a post in Central Service (Class I or Class II), a Railway Service (Class I or Class II) or a Provincial Service, shall, if its abolition would adversely affect any member of the Service, be abolished except by the Governor-General exercising his individual judgment, or the Governor exercising his individual judgment, according as the post relates to a Federal or Provincial matter.

(5) In the event of the premature abolition of a post held by a person having special qualifications, and not being a regular member of the civil service of the Crown in India, such compensation as may be deemed necessary by the Governor-General or the Governor, as the case may be, shall be payable to that person.

(6) No order which adversely affects the conditions of service of a person serving before the introduction of the new constitution can be made except by an authority which would have been competent to make such order on 8th March, 1926 or by some person empowered by the Secretary of State, subject to the right of appeal.

(7) Nothing limits or abridges the power of the Secretary of State, the Governor-General, or the Governor to deal with the case of any person serving in a civil capacity in India in such manner as may appear to him to be just and equitable.

In addition to the foregoing safeguards which apply to Services in general, the following Special

Safeguards are guaranteed to officers recruited by the Secretary of State

(b) SPECIAL SAFEGUARDS

(1) The salary, allowances and pensions payable to such officers are *charged* on the revenues of the Federation or the Province, as the case may be

✓ (2) No rules can affect adversely the remuneration or pensions payable to such officers

✓ (3) Questions relating to promotion, leave not less than three months, suspension, etc., of such officers are to be decided by the Governor General or by the Governor, as the case may be, exercising his individual judgment.

✓ (4) If such an officer feels aggrieved by an order affecting his conditions of service, he can complain to the Governor General or the Governor, as the case may be

(5) No order punishing, or formally censuring such an officer, or affecting adversely his emoluments or rights in respect of pension can be made except by the Governor-General or the Governor exercising his individual judgment. Such an order may be appealed against to the Secretary of State

(6) If the conditions of service of such an officer are adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to any such person, he may grant compensation which he may consider just and equitable

SPECIAL
RESPONSIBILITY.

In addition to the above statutory safeguards, the Governor-General and the Governors have been charged with the Special Responsibility of securing to the public services all rights provided for them by the Government of India Act, 1935, and the safeguarding of their legitimate interests.

4. A CRITICAL ESTIMATE

The salient features of the organisation of the Services in India may now be summed up.

RECRUITMENT
BY SECRETARY
OF STATE.

Firstly, recruitment by the Secretary of State is still to continue in the case of the Indian Civil Service, the Indian Police, the Reserved Departments of the Government of India, the Indian Medical Service (Civil) and the Irrigation Branch of the Service of Engineers. Officers who owe their appointments to the Secretary of State, and who cannot be touched by any authority inferior to him, cannot be relied upon to show the same subordination to the Federal or Provincial Governments, as officers appointed by, and responsible to, these Governments. The Joint Parliamentary Committee in defending the continuance of such recruitment observed: "the functions performed by members of these two Services (the Indian Civil Service and the Indian Police) are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital to the stability of the new Constitution itself, that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously

with the introduction of fundamental changes in the system of government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre".* They have however, admitted that this cannot be a permanent measure and that the position should be reviewed after some time

THE BRITISH ELEMENT

Secondly, the British element in the

All India Services is still maintained intact, this is not only expensive but constitutes a denial of legitimate opportunities to the people of the country to man their own services. But the need for British officers in the Indian Civil Service and the Indian Police, the two Security Services, cannot be dismissed on mere considerations of abstract principles. India is unfortunately torn by internal dissensions and communal strife and the confidence inspired by a European official in times of difficulty cannot be denied. His "integrity, fair play and detachment" have improved the tone of administration. But, the time has come when the British element should be reduced to the minimum, for people who are long denied opportunities of governing themselves may, because of that very denial, become unfit to govern. It is interesting to read in this connection the following remarks made by the Simon Commission —

* Joint Parliamentary Committee Report Vol I p 182

"... the British officer can for something longer render a valuable service to political progress in India. Democracy in our own country is not so much a code of principles as a way of living with one's fellow citizens, whether they be the majority or the minority in the State. It cannot be learned from textbooks, and it is inevitable that political theory and practice in India should rest more on the letter than on the spirit of British political institutions. If the best type of British recruit can be obtained as in the past, Indian political life must gain from the advice and service of men in whom the practice of British democracy is instinctive."*

EXCESSIVE SALARIES.

Thirdly, the salaries and allowances paid to the members of the All-India

Services are excessive and are out of all proportion to the capacity of the country to pay. Even taking into consideration the responsible nature of the duties, the exceptionally high standards maintained by the Services, the trying climate and the long distance from Home in the case of British officers, it cannot but be admitted that the administration is top-heavy; its cost absorbs almost the entire resources of the country so that there is little to spend on departments of social welfare. The Governor-General is the highest paid official in the world and draws a salary which is higher than the salaries of his political superiors, the Secretary of State for India and the Prime Minister. It is strange that India, one of the poorest countries on earth should be administered by services which are easily the costliest in the world.

* Simon Commission Report Vol. II, p. 290.

COMMUNAL
REPRESENTATION

Fourthly, the principle of communal representation in the Services has been accepted both by the Government of India and the Provincial Governments, with the result that in many cases merit is sacrificed by the necessity of redressing communal inequalities. So long as the minorities look to government for a guaranteed proportion of appointments, there is no inducement to them to raise their educational standards. In any case, this system should not be perpetuated but should be looked upon as tentative until the minorities avail themselves of facilities for higher education.

But when all is said, it must be admitted that the Services in India have had a long and meritorious record of efficiency and integrity.

EXCELLENT
RECORD OF
THE SERVICES.

They have provided the country with an excellent mechanism of Government, by which the smooth working of administration has been reduced to an easy and settled routine. A chain of graded officials connects the head of a province with the people in general, so that communication of government orders is made through well-established channels. Tributes have been paid to the excellent work of the higher services, particularly to that of the members of the Indian Civil Service, on whom falls the primary burden of carrying on the government.

THEIR NEW
ROLE

The acceptance of the principle of self-government for India has naturally altered the position of the Services who have no longer that freedom of action, that unlimited prestige and

that final authority which they naturally enjoyed under a hureaucratic system. The fear of creating a perfect machine incapable of adjusting itself to changed conditions was anticipated thirty years ago by Lord Morley who said : "Our danger is the creation of a pure hureaucracy, competent, honourable, faithful and industrious, hut rather mechanical, rather lifeless, perhaps rather soulless." The introduction of Reforms of 1919 and especially the inauguration of Provincial Autonomy revived these fears and it was felt that Responsible Government in India could not function successfully so long as "the Steel Frame of the Services" secure in rights, and used to an atmosphere of prestige and unquestioned obedience, remained unsympathetic. The special safeguards provided for them by the Government of India Act, 1935, strengthened such fears.

SPIRIT OF CO-OPERATION.

The working of Provincial Autonomy since April 1937 has dispelled such apprehensions. The Services, though perhaps not as accessible, sympathetic and imaginative as a purely democratic government would have them to be, have shown a spirit of accommodation and a power of adaptation to which glowing tributes have been paid.* They have co-operated whole-heartedly with their new masters—the Ministers—in launching new schemes and programmes to which they may be personally opposed. The following remark of the Joint Parliamentary Committee may be quoted with approval :—

* Congress and the Services, starting about as far apart as it was possible to be, learned to work together. The Congress learned the stubborn facts of administration. The Services learned the implications of democratic control." Sir Harry Hysig, in a paper read before the East India Association, Asiatic Review, July 1940.

"One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department."* The old jibe that an Indian Civil Servant was neither Indian, nor civil, nor a servant is no longer tenable. It is now for the new Governments to allow their responsible officials a wide discretion and to support them in the exercise of it against unreasonable criticism, even as they expect the Services to loyally carry out the policies of the governments, irrespective of their personal wishes in the matter.

* Joint Parliamentary Committee Report, Vol I p 173

CHAPTER XV.

PROVINCIAL ORGANISATION

1. THE DISTRICT AND ITS SUB-DIVISIONS

THE DISTRICT. The organisation of administration in each province is based on the division of the province into a number of "Districts." The District in British India represents the unit of administration. "Apart from exceptional areas such as the Presidency towns, every inch of soil in British India forms part of a District."* The size and density of population of the districts vary considerably, but an average district would cover an area of over four thousand square miles containing a population of nearly a million souls. "Many are much bigger. Mymensingh district holds more human souls than Switzerland. Vizagapatam district, both in area and population, exceeds Denmark. In the United Provinces, where districts are small and the population dense, each collector is on the average in charge of an area as large as Norfolk and of a population as large as that of New Zealand. The Commissioner of the Tirhut division looks after far more people than the Government of Canada."†

* Montagu Chelmsford Report, p. 73.

† Ibid., p. 72

THE COLLECTOR
MAGISTRATE

Each district is in charge of an officer—known in some provinces as the Collector and in others as the Deputy Commissioner. He is usually a member of the Indian Civil Service, though sometimes a member of the Provincial Civil Service holding a "listed" post is appointed. "The district officer has a dual capacity, as collector he is head of the revenue organisation, and as magistrate he exercises general supervision over the inferior courts and, in particular, directs the police work. In areas where there is no permanent revenue settlement he can at any time be in touch, through his revenue subordinates, with every inch of his territory. This organisation in the first place serves its peculiar purpose of collecting the revenue and of keeping the peace. But because it is so close-knit, so well-established and so thoroughly understood by the people, it simultaneously discharges easily and efficiently an immense number of other duties. It deals with the registration, alteration, and partition of holdings, the settlement of disputes, the management of indebted estates, loans to agriculturists, and, above all, famine relief. Because it controls revenue, which depends on agriculture, the supreme interest of the people, it naturally serves also as the general administration staff." * There exist several other departments in the district with staffs of their own, such as police, irrigation, roads and buildings, agriculture, industries, factories, hospitals and co-operative credit. They are manned by specialised services. But the heads of the departments, the District Superintendent of Police, the Executive Engineer, the District and Sessions

Judge, the Divisional Forest Officer the Civil Surgeon, etc., are to keep the Collector constantly and diligently informed of all activities of their departments. Though in matters of routine and internal discipline they are responsible to their own departmental superiors, their subordination to the Collector in matters affecting the peace of the district is equally important.

**HIS POSITION
AND INFLUENCE.**

In order to acquaint himself with the conditions of his district, the Collector camps from place to place, holds *durbars*, grants interviews and thus establishes a direct contact with the people in his charge. Of late, his powers have been affected by increasing departmentalisation, by the growth of communications and the spread of education, by pressure of desk-work which prevents him for devoting much time to out-door duties and by the gradual tightening of administrative control from above; so that the golden days of the civil service, when the Collector of a district was the monarch of all the surveyed, are definitely gone. But even now he wields such large powers that he is easily identified with the "government" by the people of the district.

His large magisterial powers of trying cases, supervising over the administration of criminal justice and preventing breaches of the peace; his close contact with all the departments in the district; his power of making several appointments of subordinates and clerks; and his power of recommending persons for honorary titles or other favours from the Government in addition to his control over the entire re-

venue staff, easily make him the virtual controller of the destinies of the people in his charge. The local influence of the District Officer is thus summed up by the Simon Commission —

“It is difficult to convey to an English reader how great is the prestige of the Collector of a District among the inhabitants whom he serves. The most of them, as we have said, he is the embodiment of Government. The authority which he derives from his statutory powers is augmented by the constant exercise of advice and direction in matters where he is expected to give a lead. He wields large powers of patronage, he is responsible for making a vast number of minor appointments, for instance, of village headmen and accountants, of revenue officials and office clerks. His recommendations for honorary magistrateships and nominated membership of all local self governing bodies are ordinarily accepted. He can grant seats at ceremonial functions such as ‘durbars,’ and the coveted Indian titles and honours, and other rewards, are usually conferred at his suggestion. . . the District Officer must remain a very important person, the embodiment of effective authority, and the resource to whom the countryside turns in time of difficulty or crisis. The respect in which he is held, and the influence which he wields reflect the preference for personal and visible authority, which will endure though that authority is the spokesman and instrument of responsible government. In no future that we can foresee, will the post of a District Officer cease to be one which calls for those qualities of integrity and decision,

which so many of the best kind of public servants have exhibited in the service of India."*

TALUKAS OR TAHSILS. The District is too large to manage as a single unit; it is therefore subdivided for administrative purposes. The divisions are called *Talukas* or *Tahsils* and from about four to ten of these form the District. The charge of a *taluka* or *tahsil* is held by an officer of the provincial civil service, generally known as Mamlatdar, Tahsildar or Mukhtiarkar. He must know the conditions of every village and the work of every village official in his *taluka* in an intimate fashion. Like the Collector, he has both administrative and magisterial duties and is charged with maintaining the peace of the *taluka*.

SUB-DIVISIONS. Intermediate between the district, and the *taluka* is the sub-division consisting of two to four talukas, in charge of an officer known as Assistant Collector, if he is a member of the Indian Civil Service, or Deputy Collector, if he is a member of the Provincial Civil Service.† The duties of this officer relate to assisting the Collector in supervising the administration of the work of the *mamlatdars*; they are also sub-divisional magistrates and are empowered to try cases as well as supervise and hear appeals from the lower magistrates.

VILLAGE ADMINISTRATION. A *taluka* consists of numerous villages which are the lowest administrative units. In a predominantly rural country like

* Simon Commission Report, Vol. I, p. 289-91.

† In the Non-Regulation provinces, he is known as the Assistant Commissioner if he belongs to the Indian Civil Service and as Extra Assistant Commissioner (E. A. C.) if he belongs to the Provincial Service.

India where about 90 per cent. of the population live in villages, the importance of the village administration cannot be over-estimated. The organisation of the village differs according to the system of land tenure prevailing in the area. There are two main types of villages in India—the Ryotwari and the Zemandari (or Landlord) Village. In the former, the holders of land are individually responsible for the payment of land revenue to the government, in the latter, the responsibility is collective on the village as a whole. Each village, however, has usually a village headman, known differently as Patel, Reddi or Lambardar. His office is usually hereditary. He is in charge of the village for all purposes of the government and it is through him that the government orders are usually communicated to the people. He performs numerous duties of a miscellaneous character i.e., collection of land revenue, maintenance of peace and order and recording of births and deaths. In some provinces he is also given petty magisterial powers. He usually holds a plot of land—called “watan” land—by way of remuneration for his services. Then there is the Village-Accountant known variously as *Kulkarni* or *Patwari* who maintains general records of revenue including registration, transfer and partition of agricultural holdings and keeps other accounts relating to the administration of the village. And finally, there is the Village Watchman, known as *Vethia*, *Talari* or *Choukidar*, who acts as a messenger by day and watchman by night. The hereditary character of the village officials is fast disappearing.

2. DIVISIONAL COMMISSIONERS

In all provinces except Madras there are Com-

missioners in charge of groups of some four to eight districts called "Divisions." They are Senior members of the Indian Civil Service and act as intermediaries between the Collectors and the Provincial Government. They supervise the work of the Collectors, hear appeals from their decisions in revenue matters and exercise almost direct control over certain branches of district work, particularly in relation to local self-governing bodies. Thus, they relieve the Provincial Government of much routine work. A section of opinion in India regards the Commissioner as an unnecessary link, but as against this view, there is the consideration that "his elimination would involve the provincial Governments not only in the loss of expert advice, but in the necessity of direct communication with a large number of heads of Districts and in interference in matters which at present need not come to headquarters at all."^{*}

3. BOARDS OF REVENUE

Between the Commissioners and the provincial Government, there exists in every province except Bombay, for the purpose of supervising the revenue administration, a Board of Revenue or a Financial Commissioner. "In their administrative capacity these constitute the chief revenue authority of the province, and relieve the provincial Government of much detailed work which would otherwise come to it; while in their judicial capacity they form an appellate court for the increasing volume of revenue, and often of rent suits."[†]

* Simon Commission Report, Vol. I, p. 252

† Montagu-Chelmsford Report, p. 79.

4 THE SECRETARIAT

Each provincial Government has a Secretariat usually small enough to be located in a single building. Here the Governor and his Ministers have their offices. This arrangement makes for a simple and easy inter-communication between the various branches of the Secretariat. Each branch of the Secretariat is in charge of a Secretary who is usually a member of the Indian Civil Service. There is also a Chief Secretary who is the senior-most permanent official of the province. Ordinarily the "department" is, in India, separate from the branch of the Secretariat and is controlled by the head of the department, known as *Inspector-General of Police, Chief Conservator of Forests, Director of Industries, Director of Public Instruction, Commissioner of Labour* etc. Occasionally a head of a department is also constituted a Secretary to Government for the work of his department.

5 BUREAUCRATIC GOVERNMENT

Thus, the administration of a province is conducted by graded officials beginning with the Minister in Charge, the Secretary, the Head of the Department, the Commissioners, the Collector and through him to the Assistant or Deputy Collector, the Mamlatdar down to the village headman. A notable characteristic of the Indian system of administration is the repeated sub-division of the country into smaller and smaller units, the officer in charge of each is subordinate to the officer immediately above him. This chain of officers, one responsible to the other, is often referred to as Bureaucracy.

CHAPTER XVI.

LOCAL SELF-GOVERNMENT

1. INTRODUCTORY

MEANING OF LOCAL SELF- GOVERNMENT.

By local self-government is meant the government of a locality, in respect of certain functions, by the residents themselves or through their elected representatives. The modern territorial State being too large to be governed effectively and well from one centre, there arises the necessity of delegating vast powers to subordinate officials; the central body has neither the necessary time, nor the requisite knowledge of local conditions, to do more than merely lay down broad outlines of policy. This leads to concentration of power in the hands of those officials; the larger the country and the more varied the conditions of its different parts, the greater is the scope for official domination and despotism. Hence the need for developing local self-governing institutions, whereby the people of each locality may, instead of submitting to uniform policy as laid down from above and as applied by the local officials, assume control over matters affecting the locality. The merits of local self-government as against such bureaucratic rule are very clear.

BENEFITS OF LOCAL SELF- GOVERNMENT.

Local self-government offers an excellent opportunity to the people to bring their local knowledge, interest and enthusiasm to bear on the solution of their own local

problems Since it is the wearer who knows where the shoe pinches, people of the locality are often in the best position to judge the utility of decisions which affect them vitally This is specially so when the State is concerned with benevolent or nation-building functions A "Police-State," which is merely concerned with the maintenance of law and order, would offer little scope to the residents of a locality to make any substantial contribution to the solution of local problems It is when activities like sanitation, lighting, road-making, education, etc., are developed that the diversity of local conditions is revealed and the need for intimate knowledge of local conditions becomes imperative Moreover, the provision of social amenities in a locality raises the question of cost, and when the benefits of a measure are confined to a particular locality, it appears reasonable that the people of that locality should pay for it This, in turn, requires the transfer of control over those matters to the representatives of the people of the locality Such an arrangement alone could eliminate all bickerings, develop a sense of "local pride and local shame," which acts as a healthy stimulant and leads to a rivalry among different localities to outdo one another in point of local improvements But, the case for local self-government is not based only on the considerations advanced above; as a matter of fact, the advantages explained above are not realised all at once, and a temporary set back to efficient and good government of the locality may often ensue on the institution of local self-government The most important reason for the establishment of local bodies is that it gives an opportunity to the citizens to take active interest

in local affairs. It teaches the citizens the lessons of co-operation, compromise and fellow-feeling. The citizen comes to know how by taking a creative interest in the solution of his local problems he can promote his own good and that of his neighbourhood; he can realise the essential identity of his interests with those of others. Local self-governing institutions are, therefore, the best schools for learning the lessons of citizenship. They also offer opportunities for training in leadership. In a democratic country, local self-government would appear to be the indispensable training ground which prepares for intelligent citizenship and capable leadership, the two important requisites of a successful democracy.

**DANGERS OF
LOCAL SELF-
GOVERNMENT.**

On the other hand, local self-government often leads to inefficiency, at least in the beginning, as local bodies cannot with their limited resources secure the services of people with as great a knowledge and capacity as the Central Government can. There is also a danger of the diversity of local conditions being emphasised so as to cause chaotic conditions leading to confusion and inconvenience. Local bodies are seldom immune from narrow rivalries and personal squabbles; sinister influences of powerful persons in the neighbourhood, domination by a clique, favouritism and nepotism are often associated with local bodies; and if the people of the locality are illiterate and far removed from the impact of progressive ideas, conservatism and hostility to reform may be strengthened.

CONCLUSION.

The dangers of local self-government are as real as the advantages which it is expected to yield. Hence, in organising the local

self-government of a country there is need for developing the civic consciousness of the people by providing them the necessary education in the rights and duties of citizenship. There is also an imperative need for the Central Government to keep a watchful eye on the working of the local bodies in order to check any undesirable developments before they assume serious proportions. Such interference, if carried to excess, would negative the basic principle of self government, hence a moderate but firm control from above is necessary for the development of local self-government on proper lines.

2 GROWTH OF LOCAL SELF GOVERNMENT IN INDIA

A BRITISH CREATION

India has long been famous for its ancient village communities known as *Panchayats* which discharged many functions of modern local bodies. But, "Local self government in India in the sense of a representative organisation, responsible to a body of electors, enjoying wide powers of administration and taxation, and functioning both as a school for training in responsibility and a vital link in the chain of organisms that make up the Government of the country is a British creation. The ancient village communities were constituted on a narrow basis of hereditary privilege or caste, closely restricted in the scope of their duties—collection of revenue and protection of life and property were their main functions—and were neither conscious instruments of political education nor important parts of the administrative system."^{*}

^{*} Simon Commission Report Vol I p 235

EARLY
ATTEMPTS.

The history of local government in India begins from 1687 when the Court of Directors of the East India Company issued an order for the formation of a Corporation consisting of nominated European and Indian members of the city of Madras. In 1793, the Governor-General was empowered to appoint Justices of the Peace for the three Presidency towns of Madras, Calcutta and Bombay to look after sanitation, maintenance of streets, etc. These first steps towards local government contained no elective principle which was introduced only as late as 1870 consequent on the Resolution of Lord Mayo's Government. Outside the Presidency towns, there was no attempt at establishing local bodies before 1842; the progress made after that was slow and after 1870, the elective element came to be introduced in their composition too. Various Acts were passed in the different provinces increasing the number of elected members, but the progress made was insignificant.

LORD RIPON'S
RESOLUTION
OF 1882.

A new impetus to the movement of local self-government was given by Lord Ripon's Resolution of 1882. This Resolution advocated the extension of local self-government on several grounds the most important among which were two. It was *firstly* desired as "an instrument of political and popular education"; *secondly*, it was expected to utilise the services of an intelligent class of public-spirited men for the task of administration which was becoming more complicated; it was also expected that in course of time "as local knowledge and local interest are brought to bear more freely upon local administration," im-

proved efficiency would follow. The Resolution led to a series of provincial Acts establishing local bodies in rural areas, increasing the number of elected members and extending the scope of their functions and powers. There was, however, no uniformity in the different provinces. But, there was in all provinces a substantial agreement as to the general line of the development of rural local self-government. "In all, Rural Boards were now for the first time brought into existence, in all, tax-payers were empowered to elect a proportion of their members, and in most, the grant to local Boards of the privilege of electing their Presidents, was made possible, though in practice this power was rarely exercised."*

PROGRESS
UPTO 1919

Though much progress was made as a result of this increased activity, the achievements fell considerably short of expectations. The Report of the Decentralization Commission of 1909 pointed out the natural difficulties in developing local self-government in a country like India and recommended the enlargement of powers and the grant of greater independence to local bodies. The Montagu-Chelmsford Report reviewed the whole position and came to the conclusion that "the hopes entertained of these bodies have not in the past been fulfilled. The avowed policy of directing the growth of local self-government from without rather than from within has, on the whole, been sacrificed to the need for results, and with the best intentions the presence of an official element on the boards has been prolonged beyond the point at which it would merely

* Simon Commission Report, Vol I p 300

have afforded very necessary help up to a point at which it has impeded the growth of initiative and responsibility."* Local self-government in India had grown under official protection and could not easily shake off official trammels. The District Officer presided over the deliberations of the District Local Board and regarded it as one of his many activities. "In effect, outside a few municipalities, there was in India nothing that we should recognise as local self-government of the British type before the era of Reforms."†

THE REFORMS AND AFTER.

The Montagu-Chelmsford Report in giving effect to the Announcement of August 1917, accepted the principle that "there should be, as far as possible, complete popular control in local bodies and the largest possible independence for them of outside control." Lord Chelmsford's Government accordingly issued a Resolution in 1918 to the effect that "Responsible institutions will not be stably-rooted until they are broad-based and that the best school of political education is the intelligent exercise of the vote and the efficient use of administrative power in the field of local self-government." In the course of the Resolution concrete proposals were made to reorganise local bodies on a more democratic basis. The Reforms of 1919 transferred Local self-government to ministerial control and the Provincial legislatures availed themselves of the new powers given to them to pass laws relating to the composition and powers of the local bodies. Each province aimed at lowering the franchise, at increas-

* Montagu-Chelmsford Report, p. 80.

† Simon Commission Report, Vol. I, p. 302.

ing the elected element to give it absolute majority and at removing the influence of the District Officer. The advent of Provincial Autonomy since 1937 has had similar effects, though of a more far-reaching character. In several provinces, the nominated element has been completely done away with and the true foundation of local self-government, as distinguished from local government, has been laid.

Organisation of Local Self-Government

RURAL AND URBAN BODIES.

The present organisation of local self-government in India may be divided into two main parts—rural and urban. On the rural side, the important local bodies are—(a) the District Local Board in each revenue district, except in Assam where the taluka local boards represent the largest units of local self-government, (b) the Taluka Local Boards, or Circle Boards, in each taluka or "Circle" of the district, (c) the Village Panchayats, and in the smaller villages (d) the Village Sanitary Committees. On the urban side, there are—(a) the three Municipalities of Bombay, Madras and Calcutta, (1) the Municipalities or Municipal Boroughs in large-sized town, and (c) Notified Area Committees in the smaller towns.

LACK OF UNIFORMITY

The composition, functions and powers of these bodies are not uniform in the different provinces. Local self-government being a provincial matter, legislation affecting local bodies has been undertaken in every province. The broad outlines of the system are, however, the same. The organisation of these bodies with

special reference to Bombay province is indicated in the following paragraphs.

1. COMPOSITION OF LOCAL BODIES

(a) RURAL THE DISTRICT LOCAL BOARD.

The District Local Board consists of members most of whom are elected, nominations having been abolished in many provinces since the introduction of Provincial Autonomy. The principle of separate electorates for Muhammadans is generally conceded, though in Bombay option has been recently given to the Muhammadan voters of a constituency to demand the abolition of separate electorates, if they so desire. In Sind, the principle of separate electorates has been recently modified in relation to some boards so as to compel candidates of one community to secure a prescribed percentage of the votes of the members of the other community. Seats are reserved for Muhammadans, women, scheduled castes and backward tribes. The right to vote is extended to all those residents of the district who are voters of the Provincial Legislative Assembly. Any voter, unless he is a servant or a contractor of the Board, or is otherwise specifically disqualified, can stand for election to the Board. Each Board now elects its own President and Vice-President. In Bombay, it is obligatory on each District Local Board to have a Standing Committee of not less than five and not more than seven members. The Chief Executive Officer of the Board and other officers are appointed by the Board.

THE TALUKA LOCAL BOARD.

The Taluka or Circle Boards exist only in some provinces. They generally consist of a majority of elected members,

and choose their own chairman. In some provinces all or a portion of the elected members of the District Local Board are chosen by the members of the Taluka boards.

THE VILLAGE PANCHAYATS

Though the institution of Village Panchayats is of early origin, the modern Village Panchayats have been developed only in the present century. The Decentralisation Commission of 1909 made out a forceful plea for their early establishment and though a start was made in the years following, it was only after the Reforms of 1919 that real progress was made in the direction by the popular Ministers to whom the department of local self government had been 'transferred'. In Bombay, the present organisation of the Panchayats is based on the Bombay Village Panchayat Act, 1933, as amended subsequently in 1939. So far it had been optional for a village to have a Panchayat, but the Amendment Act of 1939 gives power to the Provincial Government to institute a Panchayat in every village with a population of 2,000 or over. The Panchayat which has hitherto consisted of certain elected and certain nominated members, with the revenue Patel of the village (or the Senior Patel if there are more than one) and the holder of the village (or the principal among them if there are more than one) will now consist of all *elected* members, all nominations and hereditary claims being abolished. The Panchayat is to consist of such member, being not less than 7 or not more than 15 as the Collector may decide. Seats are to be reserved for members of Scheduled Classes and Backward

tribes on population basis. The right to vote is extended to all male adults residing or holding land or building in the village. The tenure of each Panchayat is three years; the President and the Vice-President, known as Sarpanch and Deputy Sarpanch, are elected by the members for the term of the Panchayat. The Secretary of the Panchayat is to be appointed and removed, not by the Panchayat, but by Government. Members of the Panchayat by a two-thirds majority can ask for the removal of the Secretary. Each village panchayat must constitute a Village-bench of five elected members. The Provincial Government may assign such judicial duties to it as it may deem fit.

VILLAGE SANITARY COMMITTEES. In the smallest villages where no

panchayats exist, the Bombay Village Sanitation Act, 1889, provides for the constitution of Village Sanitary Committees consisting of three or more members appointed by the Collector of the district. There were 123 such committees in the Bombay province in 1935-36; with the introduction of Panchayats in all villages with a population of 2,000 or over, many sanitary committees will be automatically abolished.

(b) URBAN

The Municipal Corporations of Bombay, Calcutta and Madras stand in a class by themselves. They have much larger bodies; their presidents elected by the members themselves are called Mayors and their chief executive officers are known as Municipal Commissioners. In Bombay and Madras, the Municipal Commissioners are members of the Indian Civil Service

appointed by Government, while in Calcutta, the appointment is in the hands of the Corporation. The constitution of the Bombay Municipality is described in detail below.

THE BOMBAY MUNICIPALITY

The Constitution of the Bombay Municipality is governed by the City of Bombay Municipal Act of 1888 as amended from time to time. At present the Municipality consists of three statutory bodies—the Corporation, the Municipal Commissioner and the Standing Committee.

THE CORPORATION

The Corporation consists of 117 members, of whom 114 are elected and three, the Police Commissioner of Bombay, the Chairman of the Bombay Port Trust and the Executive Engineer Presidency Division, who are *ex-officio* members. There are no longer any nominated members. Of the 114 elected, 106 are returned by the general voters from the different wards and eight are elected by Special Constituencies, as follows. Four are delegates of labour and four are representatives of the Bombay Chamber of Commerce, the Indian Merchants Chamber, the Bombay Millowners' Association, and the Fellows of the University of Bombay. The election is on the basis of Joint Electorates there being no reservation of seats for any community. The right to vote is extended to all residents who pay a monthly rent of five rupees but from 1942 there would be Adult Franchise. The term of the Corporation is four years. It elects its own Mayor every year, and by a convention, the office is filled by members of different communities in rotation.

THE MUNICIPAL COMMISSIONER

The Municipal Commissioner is the chief executive officer of the Municipality. He is appointed not by the Corporation, but by the Government, usually for a period of three years. It is regarded as necessary that the head of such a large body should be strong and independent and not entirely under the control of the members of the Corporation. But, in order to secure his due obedience to the Corporation, it is provided that a Municipal Commissioner may be removed if 64 Councillors so desire. The Municipal Commissioner is assisted by two deputy Commissioners appointed by the Corporation with the approval of the Government. The other officers e.g., the Municipal Secretary, the City Engineer and the Health Officer are all appointed by the Corporation. The chief functions of the Municipal Commissioner are three; he supervises and controls the entire municipal staff; he makes appointments to posts carrying a maximum salary of Rs. 500 p.m. or less; and he prepares the annual budget of the municipality.

THE STANDING COMMITTEE

The Standing Committee consists of sixteen members all elected by the Corporation. A fresh committee is elected after the general elections and half of the members retire every year and new members are elected in their place. The Chairman is elected every year from among the members and, by convention, the office is held by members of different communities by rotation. The main functions of this committee are financial. It scrutinizes the budget as prepared by the Commissioner before it is presented to the Corporation. It may introduce any changes therein and present the

modified budget to the Corporation. It sanctions contracts, establishment schedules and investments, it examines weekly accounts and frames general service regulations for the municipal staff. It is thus an important link between the Municipal Commissioner and the Corporation.

OTHER COMMITTEES

There are also two other Statutory Committees, the Improvements Committee consisting of 16 members all elected by the Corporation and the Schools Committee consisting of 16 members elected by the Corporation, seats being reserved for certain communities as follows: Muhammadans 4, Backward Hindus 3, Harijans 1. The Corporation appoints other committees to deal with specific problems of Municipal Administration.

OTHER MUNICIPALITIES

There are about 800 Municipalities or Municipal boroughs in British India with about 21 million people resident within their limits. They consist of a majority of elected members. In Bombay, nominations have been recently abolished and all members are, therefore, elected. Communal Electorates have been conceded to Muhammadans who have received option to declare by a majority for joint electorates. The election is on a wide franchise, those in Bombay province who own or occupy a house of Rs. 12 annual value or Rs. 200 capital value are entitled to vote. Each municipality must appoint a Chief officer and may appoint a Health officer, an Engineer and other officers. The Chief Officer cannot be removed except by a two-thirds majority.

NOTIFIED AREA COMMITTEES.

Notified Area Committees are formed in those areas where Municipalities cannot be established. The Bombay District Municipal Act of 1901 permits the Government to notify a town which is the headquarters of a taluka or is within one mile of a railway station to constitute a committee. The members of this Committee are all appointed by the Government. It cannot, therefore, be strictly regarded as a unit of local self-government.

PORT TRUSTS.

The major ports of Bombay, Madras, Calcutta and Karachi are controlled by Port Trusts consisting of members some of whom are nominated by the Government and some are elected by commercial and municipal bodies. The Chairman of the Port Trust is an official. The Government of India Act, 1935, has transferred the control over all major ports to the Government of India.

2. FUNCTIONS OF LOCAL SELF-GOVERNING BODIES

The local bodies are charged with the performance of functions which are primarily local in character and importance. They are classified into Obligatory and Optional.*

OBLIGATORY.

The Obligatory functions are those in regard to which the local bodies are bound to make adequate provision: they include:—

- (a) the maintenance and repair of roads and other means of communication;

* The details given in this section relate to functions of Local Bodies in Bombay.

- (b) the construction, repair and management of hospitals, dispensaries, markets dhar-mashalas and other public buildings,
- (c) the construction, repair and maintenance of public tanks, wells and water-works,
- (d) the maintenance of primary schools,
- (e) public vaccination sanitary works and public health, and
- (f) the planting and preservation of trees by the side of roads

In addition to the above obligatory functions of local bodies in general, the Municipalities are also charged with maintenance of lighting, watering and cleansing of public streets, abatement of public nuisances, protection against fire, reclamation of unhealthy localities, maintenance of asylums for lepers and lunatics, etc

OPTIONAL The Optional or Discretionary functions are those which local bodies are permitted to undertake and on which they are allowed to incur expenditure They include —

- (a) the establishment and maintenance of model farms, distribution of improved seeds, improvement of the breed of cattle and horses and the advancement of agriculture and industries,
- (b) the maintenance of relief works in time of famine or scarcity;

- (c) the maintenance and management of light railways and tramways and telephone lines; and
- (d) any other local works or measures likely to promote the health, safety, comfort or convenience of the public.

The Municipalities have the following additional discretionary functions:—maintenance of gardens, public parks, museums, libraries, dairy farms, institutions of secondary or higher education; construction of sanitary dwellings for the poor; provision for music, etc.

3. LOCAL FINANCE

MAIN SOURCES OF INCOME.

Local bodies derive their income from three main sources:—

(1) Receipts of fees for services performed by them *e.g.*, for supply of water, gas or light; for provision of drainage, scavenging and sanitary facilities; by way of rents for market stalls, etc.

(2) Government grants for certain services *e.g.*, education and towards the salaries of certain officers of local bodies.

(3) Taxes authorized to be levied by the local bodies and taxes levied and collected by the Provincial Government on behalf of local bodies. Local bodies are allowed to levy the following taxes:—Tolls; Taxes on Land and Land Values; Taxes on animals, vehicles, boats or ferries; taxes on trades and professions, Octroi duties; terminal tax and taxes on menial and domestic servants.

In practice, the local bodies rely only on a few taxes.¹ The District Local Boards depend mainly on cess on Land Revenue collected for them by the Provincial Government, tolls on roads and ferries and octroi duties are the only other important taxes generally resorted to by them. There is a general unwillingness on the part of local bodies to levy taxation partly because of the general poverty of the people and partly because of the fear of courting unpopularity. The Municipalities have shown themselves bolder in this respect and have availed themselves of the opportunity to tax to a greater extent. The Village Panchayats depend mainly on the share of cess on land revenue collected from the village, and recently the Bombay Government has made the imposition by the Village Panchayats of a House tax compulsory, the tax may, however, be paid in cash, kind or labour. The other sources of revenue allowed to the Panchayats *e g*, taxes on fairs and festivals, on sale of goods, on marriages and adoptions and octroi are scarcely availed of.

4 WORKING OF LOCAL BODIES IN INDIA

DANGERS OF GENERALISATION

It is difficult to generalise on the working of local self-governing bodies in India. Many of them have done splendid work and many have proved utterly incapable of performing their duties. "In none of the various sections of the field to be surveyed," note the Simon Commission, "have we to paint a picture of unrelieved failure or unqualified success. In every province, while a few local bodies have discharged their responsibilities with undoubted success and others have

been equally conspicuous failures, the bulk lie between these extremes."^{*}

The chief defects of our local bodies and the difficulties which they have to surmount may be briefly indicated.

**DEFECTIVE
CONSTITUTION.**

Firstly, the local bodies in India have long been dominated by officials and it is only recently that they have been made self-governing. Elections to them are still based on a restricted franchise, and the principle of separate electorates is adopted in most of them.

POOR FINANCES

Secondly, the financial resources of the bodies are inadequate and there is a general apathy in regard to taxation among the people; even the taxes that are levied are not rigidly and honestly collected. Cases of arrears and embezzlement are unfortunately not few.

**LACK OF
CIVIC SENSE.**

Thirdly, the magnitude of the change involved in the transfer of wide powers to the local bodies has not been adequately appreciated either by the electorate or by the members of the local bodies. The electorate, ignorant, conservative and caste-ridden, has not yet imbibed the civic spirit and votes are given more on considerations of community, caste or wealth than on grounds of merit. The members and chairmen of local bodies have shown a deplorable lack of knowledge of administration and have sometimes interfer-

* Simon Commission Report, Vol I p. 306.

ed too much in the work of executive officers * Their decisions are governed more by considerations of personal or communal interest than by the idea of promoting the welfare of the people under their charge

LOW STANDARDS OF ADMINISTRATION

Fourthly, the standard of administrative efficiency has in many

cases fallen due to excessive interference on the part of local bodies in the work of officers, the instability of tenure of the staff of local bodies, the making of appointments on communal grounds, the scanty salaries of the staff irregularly paid, and the low level of the civic consciousness of the people who scarcely bother about what is happening around

CONCLUSION

It must be recognised that the history of local self-government in

other countries have not been free from such difficulties, and too pessimistic a conclusion should not, therefore, be drawn from our short experience. But, unless efforts are made to put matters on a sound basis no appreciable improvement can be expected. Mere lapse of time will not remedy matters. Spread of Civic education, grant of more elastic sources of revenue, guarantee of stability of tenure for the executive officers and, above all, exercise of control by the government seem to be urgently called for

5. GOVERNMENT CONTROL

VAST LEGAL POWERS.

The provincial laws allow large powers to the Provincial Government, the Commissioners and the Collectors, to exercise super-

* The Simon Commission quoted the case of a district in which the actual supervision of the repairs of a road was parcelled out among the individual members of the board

vision over the working of local bodies. The Collector can, for example, call for any information, statement or account and can require the body to take certain matters into consideration. He may suspend any order of the body if it is likely to cause injury or annoyance to the public or, lead to a breach of the peace or, order the execution of some work in emergency, etc. The Revenue or Divisional Commissioner controls expenditure of the local bodies and if in his opinion the number of persons employed, or remuneration assigned to any officer, is excessive, he may require the body to reduce the same. The Provincial Governments, in addition to final powers of suspending or superseding the local bodies or ordering inquiries into their affairs, have also the powers of influencing the actual administration of local bodies. A President, Vice-President or a member of a local body is removable by Government for misconduct, neglect of duty or incapacity, Government sanction to appointments to the posts of Chief Officers and Health Officers is made necessary if the local bodies are to be entitled to receive government contribution towards the salary of these officers. The By-laws of the local bodies must receive government sanction. No local body can raise a loan without the previous sanction of the Provincial Government which also arranges for annual audit of accounts of the local bodies.

PRACTICAL FAILURE

The extent of control which the Government is authorised to exercise is thus very great. But, in practice they have shown reluctance to interfere in the affairs of local bodies until matters have reached such a pitch that the supersession of the local body becomes imperative. As such

drastic action is always unpopular, Provincial Governments have, on the whole failed to exercise a healthy influence over the growth of local self-government. "The failure to realise the need for control by the Provincial Governments over local self-government authorities" was considered by the Simon Commission to be a grave error. They further remarked that "where spur and rein were needed, the Ministers were only given a pole-axe." What is really wanted is a moderate control exercised in numerous ways over the administration of local bodies, so that any evils may be checked *before* they attain unmanageable proportions.

CHAPTER XVII.

EDUCATION

1. THE GROWTH OF EDUCATION IN INDIA

IMPORTANCE OF EDUCATION. The importance of education is manifold. Education has a political no less than a purely cultural or economic significance. Education not only civilises man and enables him to earn his livelihood, but forms the necessary basis of sound government, specially where the ultimate political power is vested in the people themselves.

FROM EARLY TIMES TO 1835 The state of education in India at the time of the beginning of British Rule was deplorable. "Notwithstanding the traditions and achievements of ancient learning, education in India at the beginning of the 19th century was at a very low ebb. There were hardly any printed books either in the classical languages or in the vernaculars, and Western education had not been introduced. Indigenous village schools, antiquated but self-supporting, whether conducted by Brahmin or Muhammadan teachers, could not cope with more than a fraction of the vast child population. Education for girls was almost non-existent."* The East India Company being a commercial enterprise was not quite interested in the educational uplift of the people

* Simon Commission Report, Vol. I. p. 372.

whom it was called upon to govern. Yet, a few steps were taken to encourage Oriental learning. A Muhammadan College was founded at Calcutta by Warren Hastings in 1781, and a Sanskrit College was established at Benares in 1792. The Charter Act of 1813 provided for an annual sum of one lakh of rupees for the encouragement of education. By this time many people in India, with a view to seeking employment under the Company, had learnt English and had acquired a smattering of Western education. The Company had also felt a dearth of lower Indian staff with sufficient knowledge of English, hence in 1833 a controversy arose as to the type of education which the Company should encourage and spend its monies on. The Orientalist supported the cause of classical languages *e.g.*, Sanskrit and Arabic, while the Anglicists stood for, English. The activities of the Missionaries and Social Reforms, the greater market-value of Western education and the low standards to which oriental education had sunk in the hands of incompetent *pandits* and *maulvis* ultimately led to a preference for English. To decide the question, the Government appointed in 1833 a Committee of Public Instruction presided over by Lord Macaulay who had just arrived to take charge as India's first Law Member. Macaulay's able minute on the controversy between Western and classical learning ultimately clinched the issue, and in 1835 Government decided in favour of Western education, to be imparted through the medium of the English language.

INTRODUCTION OF WESTERN LEARNING

The decision of 1835 was a momentous step in the history of education in India. Though its immediate aim was to produce

intermediaries—a class of “natives” capable of interpreting the orders of a superior civil servant to the subordinates and the people at large, it was destined to revolutionize the mentality of Indians by bringing them in touch with literary, scientific and political works of European writers. A few high schools and colleges were established by government to impart Western education through English and these institutions laid the foundations of the present system of education in India.

THE DESPATCH
OF 1854

In order, however, to organise education on sound basis, the Court of

Directors issued in 1854 a Despatch on Education, which is generally known as Sir Charles Wood's Despatch, laying down the principles on which reorganisation of education in India was to be based. It defined the aim of education in India to be “the diffusion of the improved arts, sciences, philosophy, and literature of Empire”; it recommended the creation of Departments of Public Instruction and the establishment of Universities; it called upon the governments to establish its own high schools in every district and to encourage private enterprise by grants-in-aid. It further suggested other measures e.g., grant of scholarships, increased attention to vernacular schools, encouragement of female education, etc., to promote the general growth of education in India. This Dispatch was made the basis of educational reforms in India. The Departments of Public Instruction were established in every province: Universities were founded at Bombay, Madras and Calcutta in 1857; in the Punjab in 1882 and at Alla-

habad in 1887, and the growth of high schools became rapid

EDUCATIONAL EXPANSION AND REFORM

In 1882, Lord Ripon's Government appointed a Commission under Sir William Hunter, which was satisfied

with the progress made in *secondary* education, but recommended immediate attention to the expansion of *primary* education which had fallen into neglect. In the meantime, certain defects of the newly established Universities became apparent, to consider which Lord Curzon called a Conference of European Educational Experts in 1901 and appointed a Universities Commission under Sir Thomas Raleigh in 1902. This Commission pointed out various defects in the constitution and working of the Universities and suggested suitable changes which were embodied in the Indian Universities Act, 1904. These changes related to three main heads. *Firstly*, the constitution of the Universities was changed so as to provide for reduction in the size of the Senate and for the constitution of an Academic Council (including Faculties) as separate from the Syndicate. *Secondly*, the Universities were required to exercise stricter control over their constituent colleges in matters of equipment staff, hostels, etc. *Thirdly*, Government control over the Universities and colleges was strengthened. Eighty per cent. of the members of the Senate were to be nominated by Government, all Regulations of the Senate were required to get Government sanction; appointments of University professors and the affiliation and disaffiliation of colleges were similarly to be sanctioned by Government. The increase in Government control reduced the Universities to mere

government departments. Moreover, the main defect of the Indian Universities, namely, that they were merely affiliating and examining bodies, was not removed. This problem became more serious as with the multiplication of colleges and high schools, the work of the Universities rapidly increased thereby affecting the efficiency of their administration and the quality of their instruction. A Resolution of 1913 issued by the Government of India emphasised the need for unitary and teaching Universities. Accordingly, the Benares Hindu University was founded in 1915; the Patna University in 1917, and the Aligarh University in 1920.

**THE SADLER
COMMISSION.**

The problem of University reorganisation was fully reviewed by the

Calcutta University Commission, appointed under the chairmanship of Dr. Michael Sadler. The Commission's Report submitted in 1919, is a monumental work and still constitutes an illuminating commentary on the defects of University organisation in India. Its main recommendations were, *firstly*, that an encouragement should be given to the formation of unitary and teaching Universities and one such University was specially recommended to be established at Dacca, to relieve the Calcutta University of some of its burden. *Secondly*, the creation of separate colleges teaching up to the Intermediate standard only was recommended and the University was to be relieved of control over Secondary and Intermediate education by the creation of Boards of Secondary and Intermediate education. *Thirdly*, changes were proposed in the constitution of the Universities so as to separate their purely academic functions from their

executive functions the former were vested in the Academic Council and the latter in the Syndicate *Fourthly*, the Commission recommended that colleges in Calcutta and in the mofussil should co-operate in regard to teaching work. The Report of the Sadler Commission was recommended by the Government of India to other provinces also and as a result, after the Reforms of 1919 many schemes of reorganisation of Universities were carried out in the provinces. The Dacca University and the Lucknow University were set up as unitary and teaching universities. The Delhi University was established in 1922. The Allahabad and Madras Universities were reconstituted. A University was established at Nagpur in 1923. In Bombay the constitution of the University was altered in 1928 on the recommendations of a Committee presided over by Sir Chimanlal Setalvad. The Dacca, Lucknow and Allahabad Universities have separated the Intermediate classes and handed them over to Intermediate colleges controlled by the Boards of the Secondary and Intermediate Education. The other Universities have not yet given up intermediate work.

RECENT DEVELOPMENTS

The Reforms of 1919 transferred the control over Education to popular ministers who also initiated programmes of reorganisation of primary and secondary education. A number of measures were taken in each province the more important among them being the handing over of control over primary schools to local bodies and the passing of Compulsory Primary Education Acts authorising local bodies to make primary education compulsory. The progress of primary education was, however considerably impeded by lack of adequate

funds. The advent of Provincial Autonomy has given a new impetus to the movement and educational reforms based on a new concept of "teaching through the craft" have been advocated in the Wardha Scheme which is being experimented upon in many provinces.

2. THE PRESENT ORGANISATION OF EDUCATION IN INDIA

The present organisation of education in India may be classified under three main divisions: Higher, Secondary and Primary.

UNIVERSITIES. The control over higher education is vested in the Universities except to the extent to which they are relieved of their intermediate work by Boards of Intermediate Education. There are at present 18 Universities in India. Out of these eight, namely, Bombay, Calcutta, Madras, Punjab, Nagpur, Agra, Patna and Andhra Universities are of the affiliating type though they also undertake some teaching work, the remaining ten, Dacca, Allahabad, Lucknow, Mysore, Benares, Aligarh, Osmania, Delhi, Annamalai and Travancore are unitary and teaching. In 1936-37, there were, 241 Arts Colleges and 66 Professional Colleges in the whole of India; the total number of scholars studying in the Universities and colleges were 111,784 males and 6,996 females.

THEIR CONSTITUTION. The Universities in India award degrees (and some times diplomas) in the faculties of Arts, Science, Education, Engineering, Medicine, Law, Commerce, Oriental Learning, Technology and Agriculture; some of the smaller Universities do not, however, have all these faculties.

The constitution of the different Universities varies in matters of detail, but every University has a Chancellor usually the Governor of the province and a Vice Chancellor who is nominated by the Chancellor though in the Universities recently established the person usually elected by the highest University body is nominated to the post. He usually serves in an honorary capacity but in some of the unitary and teaching Universities, the Vice Chancellor is a whole-time paid servant of the University. The executive functions of the University are usually vested in a small body known as the Syndicate or Executive Council and the exercise of academic functions is vested in an Academic Council. The Syndicate and the Academic Council have a few ex-officio members e.g., the Director of Public Instruction of the Province and the Registrar of the University, the others are elected partly by Boards of Studies in different subjects and partly by the members of the Senate. The Senate is the largest and the most popular body consisting of about a hundred members elected partly by teachers of the University, partly by Principals of Colleges, and partly by Registered graduates and certain local bodies. Some members are also nominated by the Government. The functions of the Senate relate to passing the annual budget of the University and deciding all important questions of policy, subject to the sanction of the Chancellor. The Vice-Chancellor presides over the meetings of the Senate, the Academic Council and the Syndicate.

INTER UNIVERSITY BOARD

The Inter University Board was established in 1925. All the Indian Universities are represented on it. Its functions are

(a) to act as an Inter-University organisation and a bureau of information; (b) to facilitate the exchange of professors; (c) to serve as an authorised channel of communication and facilitate the co-ordination of university work; (d) to assist Indian Universities in obtaining recognition for their degrees, diplomas and examinations in other countries; (e) to appoint or recommend, where necessary, a common representative or representatives of India at Imperial or International Conferences on higher education; (f) to act as an appointments bureau for Indian Universities, (g) to fulfil such other duties as may be assigned to it from time to time by the Indian Universities.

The Board also functions as a National Committee of Intellectual Co-operation in India. Its influence on University education in India has not not been significant. It has only collected some useful information and stimulated thought on University problems.

AFFILIATED COLLEGES.

The colleges affiliated to the Universities prepare students for examinations conducted by the Universities. They are inspected and, in some matters, controlled by the Universities which have the power to disaffiliate them. Some of the colleges belong to the Government and are, therefore, directly controlled by the Director of Public Instruction of the province; others are run by Christian Mission Societies and though at first these institutions had their primary object as propagation of Christianity, they are now almost entirely secular institutions; the remaining are private

colleges started by societies or associations of influential people of a locality. The cost of the Government colleges is borne entirely by the Government, while the other colleges, if recognised, receive grants in aid from the Government and have, therefore, to submit themselves to some government control.

SECONDARY EDUCATION

Secondary Education is imparted in High Schools and Middle or Anglo-Vernacular Schools some of which belong to the Government while others are run either by Mission Societies or by private bodies and receive grants in aid from the Government. Usually, there is one Government High School at the Headquarters of every district originally, intended to be a model institution. But private effort has now been attracted to such an extent that in many places Governments have actually abolished their high schools or have handed them over to private bodies. In 1936-37, the total number of High and Middle Schools in British India was 14,404 out of which 3,652 were Middle Schools, the total number of scholars studying in these institutions was 2,496,826 out of these 357,504 or about 15 per cent., were females.

PRIMARY EDUCATION

Primary Education is imparted in schools the control over which has been transferred to local bodies—the Municipalities in the towns and the District Local Boards in rural areas. In 1936-37, there were 197,227 primary schools, and the number of scholars studying in them were 10,541,790, out of whom 2,611,577, or about 24 per cent were females.

CONTROL OF
EDUCATION.

The Education department in each province is controlled by the Director of Public Instruction, usually a member of the Indian Educational Service. He controls the entire teaching staff of the government colleges and schools and organises and controls the inspection, recognition and the payment of grants-in-aid to institutions run by private or local bodies. He is an *ex-officio* member of all the governing bodies of the University in the province. The Government of India maintain an Educational Commissioner to control education in the Centrally Administered Areas and to advise the Government of India on educational matters. There is also a Central Advisory Board revived since 1935, to co-ordinate and study problems relating to education in India.

3. GENERAL REMARKS

THE SUITABILITY
OF WESTERN
LEARNING.

The system of education in India has come in for lot of criticism. Some have raised the fundamental issue whether public education in British India has not from the beginning been developed on wrong lines. They contend that "Western methods and objectives have precluded the growth of an indigenous culture expressive of, and responsive to, the different types of native genius." Hence, they stand for a complete "reorientation" of the whole educational system. Nothing, however, will now be gained, by abolishing Universities, colleges and schools and reverting to Patshalas and Maktibs; such a reversion could be advocated only by those who deliberately shut their eyes to the fast changing conditions of modern times.

Hence, what is required is the study of the main defects of the present system with a view to securing its improvement and extension

LOW LEVEL OF LITERACY

The most glaring defect of the educational organisation in India is the comparative lack of primary education. At present, after about a hundred and fifty years of British rule not even ten per cent. of the total population can read and write, the ignorance of the masses is simply appalling. India is a land of villages and yet more than half the number of the villages are without any school. Female education is in a still more unsatisfactory condition. The purdah system, early marriage, the old conception of woman as a household drudge and the lack of female teachers generally account for the low level of female education in India.

COMPULSORY PRIMARY EDUCATION

The need for a programme of compulsory and free primary education has long been realised in India and various local bodies have availed themselves of permissive legislation passed by the provinces to enforce compulsion in certain selected areas, but the question is one which involves large financial obligations. Some progress in this respect has been made by popular ministers after the introduction of Provincial Autonomy, by establishing primary schools in small villages, by starting Literacy Campaigns and by organising Adult Education, but as yet only the fringe of the problem has been touched.

ANTIQUATED
METHODS

The quality of primary education imparted in India is of a very low

order. In small villages there are single teacher schools; the staff is largely untrained, ill-paid and overworked; the methods of education followed are in most cases anti-diluvian; Montessori and Kindergarten classes have been started in big towns but the large percentage of the child population is still taught on old lines. There is also lot of wastage and stagnation in primary schools as all those who join the primary schools do not reach the school-leaving standard, but are generally compelled to leave off in the middle; this is specially so in the case of females. The control of local bodies over primary education has, in many cases, led to favouritism in the making of appointments and the ordering of transfers with the result that efficiency has suffered.

DEFECTS OF
SECONDARY
EDUCATION.

Secondary Education in India has long been dominated by ideals of liberal education and an unduly

literary bias is given to education imparted in the high and middle schools. The schools act primarily as feeders of colleges and prepare students for examinations conducted by the Universities. There is, therefore, a conspicuous lack of facilities for vocational education; agricultural, technical and commercial schools are few and far between with the result that the large body of matriculates turned out every year are unable to secure suitable employment. The standard of instruction imparted in the schools is affected by the unwholesome conditions of work of teachers in private institutions which offer neither security nor

adequate remuneration to the staff The facilities for the training of teachers are also inadequate

NEED FOR UNIVERSITY REORGANISATION

The organisation of higher education in India has revealed several defects The affiliating Universities examining thousands of candidates in numerous centres situated in the mofussil and controlling a vast number of colleges widely spread out, are clearly overburdened so that the administration becomes unwieldy and standards of uniformity are difficult to maintain The demand for Regional Universities controlling areas of linguistic unity can scarcely be opposed on principle, the problem is one of finding adequate funds and a sufficiently large number of capable persons to run the new Universities The Universities in India are criticised for lack of co-operation among one another in matters of recognition of examinations, exchange of staff, specialisation in certain faculties and in conduct of research This failure to co-operate has resulted in uncereceremonious recriminations and in one University being merely a replica of the other, so much so that there is an unnecessary duplication of work and little scope for specialisation. An Inter-University Board established in 1295 endeavours to stimulate co-operation among the Universities but its influence has not yet been considerable It functions mainly as a Bureau of Information on matters relating to University Education in India.

STANDARD OF UNIVERSITY EDUCATION

University education is condemned as too literary and academic, putting an undue premium on passing examinations to the neglect of other qualities which make

a successful man; even where Universities have started colleges for technical and commercial education, the instruction imparted is of a theoretical nature; the Universities have shown a singular lack of imagination in starting new courses in journalism, librarianship, insurance, co-operation, etc., so that, on the whole, University degrees have become mere paper distinctions having negligible market value and conveying no idea of a person's true abilities; as instruction is imparted in a foreign tongue, most of the candidates are unable to benefit from lectures. Thus the aystem of higher education is criticised as not being "adjusted to the social and economic structure of the country," and as leading to "educated or partly-educated output," in excess of the country's capacity to absorb.

THE ROLE OF THE UNIVERSITY.

While much of the criticism is well-founded, it must be realised that the essential role of a University is to prepare its members for *life* and not for *livelihood*. The blame for inadequate facilities for vocational education cannot be entirely thrown on the Universities; nor is it fair, for that reason, to consider provision for University education as being in excess of the country's requirements. A realisation of the true function of a University should lead the Government and private enterprise to secure the establishment of technical institutions, calling upon Universities to make the necessary changes in their curricula. The need for developing and strengthening University education in this cannot be over-emphasised. Persons of the highest ability and calibre are required in all walks of life and, with

the establishment of responsible Government, the task of legislation and administration falls increasingly on the people of the country, and in the training of leaders and citizens, the Universities must play an important part. Moreover, the success of secondary and primary education would to a large extent depend on the quality of university graduates who must staff the lower institutions

CHAPTER XVIII.

LAND REVENUE

1. INTRODUCTORY

IMPORTANCE OF LAND REVENUE.

Land Revenue is the share of the produce of land paid to the State. The importance of land revenue in India is derived from the fact that India is a predominantly agricultural country, with over three-fourths of the population directly or indirectly dependent on agriculture. The State in India has, therefore, from the very beginning claimed a share of the produce of land and even now land revenue is the chief source of income to the provinces. Out of Rs. 87 crores of total provincial revenues in 1939-40 Rs. 27 crores were derived from land revenue alone.

LAND REVENUE & LAND TENURE.

There are two main problems connected with land revenue:—(1) The assessment and collection of the share claimed by government, and (2) the rights and liabilities of different persons owning or cultivating land with reference to such payments of land revenue. The latter may be summed up in the term Land Tenure. At present, India exhibits a bewildering variety of different systems of land revenue and land tenure existing side by side. It would be impossible to understand these except by looking at the process by which they came to be evolved at different times. The problem is understandable except through its history.

2 SHORT HISTORY OF LAND REVENUE AND LAND TENURE

PRE BRITISH
SYSTEM

When the East India Company in 1765 assumed the *Dewan* of Bengal, Bihar and Orissa, they found themselves face to face with a system of land revenue administration which could only be described as a 'disorganised scramble for the greatest amount of income which could be wrung from the land'* Two centuries before, Akhar the Great Moghul Emperor had with the assistance of Raja Todarmal carried out far-reaching reforms in land revenue Akhar had the land carefully measured and classified according to the fertility of the soil, and introduced a system of decennial settlements, the assessment being fixed at one-third of the normal produce converted into money The system could not survive the shock of the disruption of the Moghul Empire, advantage was taken by numerous adventurers who were charged with the collection of land revenue to impose their own rights and privileges on land.

PERMANENT
SETTLEMENT
IN BENGAL.

The Company's first experiments in evolving a suitable system of land revenue proved unfortunate The commercial instincts of the Company favoured the process of farming out land to the highest bidders This was a simple but disastrous policy which could only have one result—the depletion of the qualities of the soil and its consequent impoverishment. Warren Hastings improved the machinery of collection of land revenue but continued the same method of assessment. The attention of the Company was soon drawn to the evil effects of

* Imperial Gazetteer Vol IV p 206

the system and they accordingly instructed Lord Cornwallis to set it right. An inquiry was conducted by Sir John Shore and a *settlement* of land revenue was made in 1789 originally for ten years, but was in 1793 declared *permanent*. Under this system of Permanent Settlement, "the Zemindars were declared proprietors of the areas over which their revenue collection extended, subject to the payment of land revenue, and to the liability to have their lands sold for failure of payment. The assessment fixed on the land was declared to be unalterable for ever, and the Government specifically undertook not to make any demand on the Zemindars, or their heirs or successors, for augmentation of the public assessment in consequences of the improvement of their representative estates."* The land revenue was assessed at approximately 10/11ths of what the Zemindar received from the ryot by way of rent. Though this assessment was at first regarded as excessive and resulted in several Zemindars committing defaults, the system produced beneficial effects in so far as the Zemindars had secured permanent right over their lands and could make improvement on them without having to be asked to pay increased revenue. The Company also got its revenues punctually without incurring any appreciable cost of collection. The Directors approved of the system to such an extent that they contemplated its establishment in other parts of India. Permanent Settlement was introduced in the area round about Benares and in certain parts of the Madras Presidency, but the evils of the system gradually drew the attention of the Company. Though the land revenue payable by the Zemindars

* Simon Commission Report, Vol. I, p. 339

had been fixed, the position of the *ryot* in the matter of payment of rent to the *Zemindar* was not safeguarded. Hence, with the rise in prices of agricultural produce, the *Zemindars* benefitted by extorting higher rents from the *ryots*, pocketing the difference themselves. The Directors realised the mistake which had reduced the share of the government to a fixed sum of money, in spite of soaring prices, and expressly forbade its extension to other areas.

TEMPORARY SETTLEMENTS

Meanwhile, Sir Thomas Munro, the Governor of Madras, introduced a new system of "direct settlements with the cultivators themselves," known as the *Ryotwari* system in certain parts of Madras. This system was later extended to Bombay and Burma. In the United Provinces, the Company found a different system prevailing already. In Oudh, there were a number of petty rulers, known as "*taluqdars*" who had long collected land revenue and paid a fixed sum to the previous rulers, in other parts of the province, there were certain village bodies in possession of the village area. Their proprietary rights were recognised by the Company and settlements were made with them. A similar system was adopted in the Punjab. In the Central Provinces, the British allowed certain existing individuals known as *Malguzars* to whom the land revenue of villages had been farmed out since the days of the Maharattas, to continue, and made them responsible for the payment of land revenue. In all these provinces, settlements made were not permanent but were subject to periodical revision.

3. SYSTEMS OF LAND TENURE (INCLUDING TENANCY)

THREE KINDS OF TENURE

There are innumerable systems of land tenure in India, but they could

be classified under three main divisions—*zemindari*, *ryotwari* and *mahaliwari*. Under the *Zemindari* tenure, the landlord generally owning large estates and having several cultivators under him is the proprietor of land and is directly responsible for the payment of land revenue to the government; under the *Ryotwari* system, each individual proprietor of usually a small plot of land, cultivated by him with the assistance of a few labourers, is directly responsible for the payment of land revenue to the government, without the intervention of any middleman. Under the *Mahalwari* system, the village-community as a whole, consisting of several holders of land, deals with the government; the responsibility of paying the revenue is joint and several on the part of the proprietors. Thus, the landlord, the small proprietor and the village-community, respectively, constitute proprietors of land in each of these systems.

SUB-PROPRIETORS. Besides the proprietors, there are usually certain classes who have claimed semi-proprietary or sub-proprietary rights in land; this is specially so in Bengal where the process of sub-infeudation has been developed. Some of these sub-proprietors have had their rights recognised by law.

TENANTS.

The actual cultivation of land is generally left, even in the *ryotwari* areas, to tenants whose rights in land originally depended on custom or contract but have now been

increasingly regulated by Acts of Provincial governments. Some of them are *occupancy tenants* and cannot be ejected from land so long as they pay rent, their rent cannot be enhanced at the will of the landlord and may be reduced if there is a permanent fall in prices or deterioration in the soil, the occupancy right is hereditary and alienable, in addition, they enjoy several other rights which make their position privileged. On the other hand, there are *tenants-at-will* whose position with regard to tenure, rent, etc. is entirely in the hands of the Zamindars. Intermediate between these two classes are tenants with rights and privileges of different degrees. The recent tendency in provincial legislation has been to guarantee security of tenure and immunity from enhancement of rent to all those tenants who have cultivated a plot of land for a particular number of years, subject to certain conditions including regular payment of rent. It can scarcely be denied that the large body of tenants should be afforded all reasonable protection to allow them to do their work with enthusiasm.

4. THE SETTLEMENT OF LAND REVENUE

PERIOD OF SETTLEMENTS

The foregoing account of land tenures shows us which parties have rights to land and which of them are responsible for payment of land revenue to government. The next question is—How is the amount of Land Revenue payable to the government settled? Here, a distinction must be drawn between areas with Permanent Settlement and the remaining areas where Settlement is subject to periodical revision. The question of

assessment in the former areas has been decided once for all; in the latter areas, the settlement is revised at the expiration of certain periods which are not the same for all provinces.

BASIS OF SETTLEMENT.

The assessment is not based on any uniform principle. In the Punjab, United Provinces and Central Provinces, *Economic Rent* of the land is regarded as the basis; in Madras, *Net Produce* of the land is taken as the basis; in Bombay, no rigid test is adopted and *general economic considerations* are allowed to influence the Settlement officer to fix the land revenue payable.

SETTLEMENT PROCEDURE

The actual work of settlement is usually preceded by a compilation of a record of all taxable land, known as the Cadastral Record, and is accompanied by a detailed enquiry into the general economic conditions of the locality to find out the changes, favourable or otherwise, that might have occurred since the last settlement.

5 THE COLLECTION OF LAND REVENUE

COLLECTING AGENCIES.

The task of collecting Land Revenue is entrusted to a body of revenue officials who also form the general administrative staff of the country. The District Collector supervises revenue administration in the district and has below him Assistant and Deputy Collectors, Mamlatdars or Tahsildars, to assist him in the discharge of his duties. All disputes about revenue matters are referred to special revenue courts. The Collector of the District constitutes the Revenue Court of the District and appeals from

him lie to the Commissioner of the Division. In all provinces, except Bombay, there is a Board of Revenue or a Financial Commissioner, acting as the final authority in matters relating to land revenue.

SUSPENSIONS AND REMISSIONS The collection of land revenue is generally made in instalments, soon after the crops are harvested. In case of floods, failure of rains, destruction by locusts, etc., government suspend collections and postpone them till the next season, or remit the amounts wholly or in part.

6. GENERAL REMARKS

ZEMINDARI SYSTEM The system of land revenue in India is defective in many respects. *Firstly*, there is a growing opposition, recently expressed through peasant organisations, against the Zemindari system. The Zemindars are looked upon as social parasites who perform no duties, and yet derive all the benefits, of ownership of land. This criticism is all the more vehement in permanently settled areas where the Zemindars have flourished most at the expense of the tenantry.

PERMANENT SETTLEMENT *Secondly*, it is regarded as unfair that certain areas should have permanent settlement and thus escape any increase in land revenue, while others should submit to periodical enhancements. This has created problems not only of equity but also of economy. The Government of Bengal derives a much less proportion of its income from land revenue than it would, if the areas under its control were subject to periodical revision, the

finances of Bengal have all along been in a woeful plight and the consequent generosity of the Government of India in assigning a large share of the proceeds of the export duty of jute has excited the resentment of other provinces. Since the introduction of Provincial Autonomy, the problem has been seriously taken in hand.*

DISTRIBUTION OF BURDEN.

Thirdly, the methods of assessment and collection of land revenue admit of great improvement both in point of principle and actual practice. A glaring defect, in this respect, is that even the smallest holder whose land may not produce income sufficient to keep his body and soul together has to pay land-revenue; while the biggest landlord pays on more than *proportional* revenue, though his capacity to pay is much in excess. And since, agricultural income is not subject to income-tax, the big Zemindars are on the whole easily let off. There is urgent need for exempting the very smallest of holders from payment of land revenue, and for increasing the burden on the Zemindars either by adopting a scale graduated according to the amount of income or by levying income-tax on agricultural incomes.

* The Bengal Land Revenue Commission in their report, published in May 1940 express the view that the permanent settlement is no longer suited to conditions at the present time and that the Zemindari system has developed so many defects that it has ceased to serve any national interests. It therefore recommends that all interests in land between the State and the actual tillers of the soil should be purchased by the State at an approximate cost of Rs 78 Crores. Pending necessary legislation to give effect to this recommendation, it is suggested that agricultural income should be taxed.



CHAPTER XIX

THE POLICE AND JAILS

I. The Police

1 GROWTH OF INDIAN POLICE

THE PRE BRITISH SYSTEM The Pre-British system of Police organisation in India was based on the system of land tenure. The local Zemindar and his sub-ordinate tenure holders were primarily held responsible for all crimes committed within the areas under their control. In the villages, the headman was responsible for the maintenance of law and order and was, for that purpose, provided with a village watchman. In the towns, there was a Kotwal who maintained a large establishment and policed the whole city. While the Zemindars were expected to defray their own expenses, the village watchman was given a plot of land and was allowed to receive contributions from the people of the village, the Kotwal was granted a large salary out of which he also maintained his establishment.

EARLY REFORMS The first step towards the foundation of the modern police organisation was taken by Lord Cornwallis who relieved the Zemindars of the burden of policing the country and ordered the District Judges of Bengal in 1793 to open a Police Station, or a Thana, for every 400 square miles, and to place a *regularly paid Police Station*

Officer, or Thanadar, over it. The village and town systems were retained with a few modifications. From 1801 to 1860, each province made attempts to organise its police force; for example in Madras, in 1816, Sir Thomas Munro "took superintendence of police out of the hands of the sedentary judges and placed it in the bands of the peripatetic collector, who had the indigenous village police system already under his control". In 1848, Sir George Clarke, the Governor of Bombay, appointed full time European Superintendents of Police in many districts. The Sepoy Mutiny of 1857 drew the attention of the Government of India to the necessity of police reorganisation.

THE POLICE COMMISSION OF 1860.

Accordingly a Commission was appointed in 1860 whose main recommendations were embodied in 'An Act for the Regulation of Police' of 1861. As this Act, except for a few modifications made by Provincial Acts in Bombay and Madras, still governs the principles of police organisation in India, the main changes effected by it may be noted. The military police as a separate organisation was abolished except in the North-West Frontier Province. The control of police in each province was vested in a single officer, the Inspector General, who was provided with a large staff both at headquarters and in the Districts. The control of police in each District was vested in a District Superintendent of Police (D.S.P.) with Inspectors, Sub-inspectors, Head-constables and constables under him. In 1902, Lord Curzon's Government appointed a Commission to examine the working of Indian police. Its main recommendations related to modern-

izing of the police department, providing for district enlistment and training, appointing Indians as Police Station Officers and the creation of Criminal Investigation Departments (CID) These recommendations were in the main adopted

2 ORGANISATION OF POLICE IN BRITISH INDIA

POLICE A PROVINCIAL SUBJECT

The police organisation in India is completely provincialised Except perhaps for the Delhi Imperial Area Police and the advisory staff of the Intelligence Bureau attached to the Home Department of the Government of India, there is no such thing as Indian Police The control over police is now vested entirely in the provincial governments In minor provinces administered by the Chief Commissioners, the control is vested in the Chief Commissioner, subject to the general control of the Central Government.

THE OFFICIAL HIERARCHY

Each province has generally a single police force under its control In Bombay a separate force is maintained by each district The Inspector-General of Police is at the head of the Police department and is directly responsible to the Minister for Law and Order. Below him are Deputy-Inspectors General controlling certain portions of the province known as "ranges" In the District the control is exercised by the District Superintendent of Police who is primarily responsible for the recruitment, management and discipline of the force in his district Though in all departmental matters he is responsible to the Inspector-General and the Deputy Inspector-General, he has also certain duties towards the District Magistrate He is under a dual control

"The District Magistrate, as chief executive authority in the District, is primarily responsible for the maintenance of law and order and the criminal administration of the District, and for this purpose the police force is under his control and direction. The District Superintendent of Police is the District Magistrate's assistant for police purposes, and it is his duty to keep the latter fully informed, both by personal confidence and by special reports, of all matters of importance concerning the peace of the District and the state of crime."* The District Superintendent of Police is a member of the Indian Police Service and has under him Assistant Superintendents, belonging to the same service and Deputy Superintendents, belonging to the Provincial Service. Below these are Inspectors in charge of "circles," who are assisted by Sub-Inspectors in charge of police stations. In the villages, the Chowkidar or the village watchman still continues to function. His office is generally hereditary and he receives no regular salary from the government but is provided with land or with monies contributed by the villagers. There are, in some villages, Police Patels whose duty it is to exercise a general supervision with a view to preventing or detecting crime, and to keep the officers generally informed on matters relating to crime.

PRESIDENCY POLICE.

The control of police force in "Presidency towns is vested in a Police Commissioner who is not subordinate to the Inspector-General and deals direct with the Government. There are special police Acts governing the procedure of

* Simon Commission Report, Vol. I, p. 237.

police in the Presidency towns The Police Commissioner is responsible for the recruitment and maintenance of the police force in his charge and for the preservation of law and order

RAILWAY POLICE For the prevention and detection of crime on the railways a separate organisation known as the Railway Police is maintained Its cost is met from provincial revenues and its control is vested in Superintendents responsible to the Provincial Government The Railways however, maintain at their own cost a "Watch and Ward Staff" at strategic centres

THE C I D A Criminal Investigation Department was started in each province on the recommendations of the Curzon Police Commission of 1902-3 for the 'investigation of specialist and professional crime' These departments collect information about crime, take special charge of crimes of an inter-provincial nature and investigate conspiracies of a widespread and a dangerous character The work of these departments is co-ordinated by a Central Intelligence Bureau attached to the Home Department of the Government of India The Bureau is in charge of a Director who acts as adviser in police matters to the Home Department.

II. Jail Administration

1. ORGANISATION OF JAILS

HISTORICAL. The administration of jails in India is governed by the Prisons Act of 1894 and the rules issued under it. This Act is based mainly on the recommendations of the Jail Commis-

sion of 1888-89, consisting of two officials of the Government of India. Prior to that, Government had appointed a committee in 1836-38, another committee in 1864 and had called a conference of experts in 1877; of these the report of the Jail Committee of 1836-38, of which Lord Macaulay was a member deserves some notice. The Committee was pleased with the standards of cleanliness, provision of food and clothing and attention to the sick, maintained in Indian prisons but exposed the corruption of the subordinate officials and the laxity of discipline. It disapproved of proposals for introducing religious teaching or education and was against the starting of industries in jails. The report of the Commission of 1888-89 constitutes a landmark in the history of jail administration in India. Its recommendations most of which are embodied in the Prisons Act of 1894 have laid the basis of modern jail organisation in India.

PRESENT ORGANISATION.

Jails in India fall under three categories: Central Jails for all convicts sentenced to more than one year's imprisonment; District jails at the headquarters of each District; and Subsidiary jails and police "lock-ups" for under-trial prisoners and those sentenced to short imprisonment. The control of the jail department is vested in the Inspector-General of Prisons who is usually an officer of the Indian Medical Service. Each Central Jail is in charge of a Superintendent with a Deputy-Superintendent under him; each District Jail is in charge of a Civil Surgeon; all these officers belong to the Medical Service. Below them are jailers, warders and a few convict petty officers appointed from among the most well-behaved prisoners.

2 JAIL REFORM

ITS
PRINCIPLES

Towards the latter part of the 19th century, the science of prison administration made a rapid advance in America where attention was given to new views regarding the origin and prevention of crimes. The science of penology came to be developed and social reforms in various countries pointed out the need for humanizing prison administration with a view to making the released prisoners useful members of society. Punishment of offenders was no longer conceived of in a spirit of vengeance or as a mere deterrent, but was regarded as reformatory.

THE JAILS COM-
MITTEE OF 1919

The Government of India, though not committed to the above view, realised the need for improving the condition of prisoners and appointed a Jails Committee in 1919. The Committee found that Indian prison system had lagged behind on the reformatory side. "It has failed so far to regard the prisoner as an individual and has conceived of him rather as a unit in the administrative machinery. It has a little lost sight of the effect which humanizing and civilising influences might have on the mind of the individual prisoner and has focussed its attention on his material well being, his diet, health and labour. Little attention has been paid to the possibility of moral or intellectual improvement."* The recommendations of the Committee, therefore, related mainly to the *reformatory* side of prison life. Among other things, it recommended the separation of civil from criminal offenders, the segregation of

* Report of the Jails Committee 1919-20

habitual offenders from ordinary prisoners; the provision for separate accommodation for under-trials; the improving and increasing of existing jail accommodation; the recruitment of a better class of warders; the provision of education for prisoners; the adoption of the English system of release on license in the case of adolescents; the creation of children's courts; and the development of prison industries.

RECENT
DEVELOPMENTS.

In accordance with the above recommendations various reforms have been carried out in each province. Several provinces, e.g., the Punjab and U. P., have since appointed committees to make recommendations regarding the improvement of their jail organisation and several steps have been taken to bring the jail administration in line with modern ideas and practices. The advent of Provincial Autonomy created a new interest in the subject of penal reform and the first All-India Penal Conference was convened in Bombay in the beginning of 1940. The penal reforms introduced since 1919 relate mainly to special provisions for children and juvenile offenders. In many provinces special Children's Acts and Youthful Offenders Acts have been passed to enable the Magistrates to deal with such offenders in the best possible way. The Magistrates may discharge such offenders after admonition or may deliver them to the charge of their parents or guardians on the latter executing a bond to be responsible for their good behaviour or may send them to a Reformatory School. In some provinces Borstal Acts have been passed and institutions on the model of Borstal Jails in England have been set up; some pro-

vinces have set up special Juvenile Jails Provision has also been made in some provinces for special Children's Courts and Juvenile Courts It is now a recognised fact that the delinquent child and the youthful offender are not so much criminals as victims of social maladjustment, and the proper way to deal with them is to entrust them to the care of psychiatrists and social reformers who may diagnose their malady and treat it

CHAPTER XX.

FAMINES

1. HISTORY OF INDIAN FAMINES

PRE-BRITISH
PERIOD.

India is a predominantly agricultural country with over three-fourths of the population dependent for its livelihood on the produce of land. Vast tracts of the country depend for their water-supply on the vagaries of the monsoon, so that any absence or shortage of rainfall spells wholesale disaster to millions of men. No wonder, that famines have been experienced in this country from the earliest times. The unprecedented frequency and severity of the famines towards the latter part of the 19th century, together with a greater political awakening of the people, gave rise to a bogey that famines had been brought in India by British rule. But nothing can be more fantastic than that. India has known famines long before the first British merchants set foot on Indian soil. The famines of 1291, 1555 and 1630 have left an indelible mark on Indian history. Their severity was so widespread and the sufferings of the people were so acute that there are stories of whole families drowning themselves and people living on dead animals or practising cannibalism, reported by historians of unimpeachable integrity. There is also evidence of provision of grain stores, construction of public works and distribution of public charity by the former rulers of India, in times of famine.

THE EAST INDIA
COMPANY'S RULE

During the regime of the East India Company a number of famines of varying severity broke out in different parts of the country in 1770, 1784, 1802, 1824 and 1827. The Company was pre-occupied with its commercial and military pursuits and made no systematic effort to relieve the sufferings of the famine-stricken population.

LATER PART OF
THE 19TH
CENTURY

In the latter part of the nineteenth century, famines of great severity and length involving acute sufferings stalked the land at different intervals. The Orissa famines of 1865-7, the great South Indian famine of 1876-8 and the famine of 1899-1900 may be regarded as the three greatest famines that India experienced during this period. The Orissa famine of 1865-7 is said to have affected an area of about 180,000 square miles involving about five crores of population, it resulted in the death of about ten lakhs of people, one-third of the entire population of Orissa. The South Indian famine of 1876-8 affected Madras, Mysore, Hyderabad and Bombay and later extended to the Central and United Provinces. It is said to have caused a mortality of about 52 lakhs of people. The great famine of 1899-1900 affected the whole of Central and Western India and parts of the South, a total area of about 475,000 square miles with a population of about six crores.

2 THEIR EFFECTS AND CAUSES

EVIL EFFECTS

The economic and social effects of the famines were, to say the least, disastrous. They led to complete disorganisation of

the social life of the areas affected. The heavy mortality partly from starvation and partly from epidemics which usually followed such famines; the great economic loss to the population already sunk in poverty and debt; the ravages of diseases due to malnutrition on those who survived and the general set back to industry and trade resulting from the low purchasing power of the people could not but produce a picture of unrelieved misery and woe.

CAUSES

The causes of Indian famines are not far to seek. In a country whose population depends almost entirely on agriculture which is at the mercy of a precarious monsoon known for its vagaries, the recurrence of famines cannot be surprising. The ill-balanced economy of the country whereby there is an over-dependence on the soil, the lack of irrigational and other facilities of water-supply in the event of rainfall proving to be inadequate, untimely or ill-distributed, the complete absence of facilities to drain away surplus water in case of excessive rainfall and the ill-developed methods of communication leading to practical isolation of different localities were among the chief causes leading to famines. The development of irrigation and railways in India and the perfection of the machinery of famine relief have now changed the nature of famines and have considerably diminished their severity. Instead of being food or fodder famines where people and cattle had to starve, famines, since the beginning of the present century have come to be "money famines" marked by high prices of the articles of consumption.

3 FAMINE RELIEF

DEVELOPMENT OF RELIEF ORGANISATION The first famine which seriously attracted the attention of the Government of India was the Orissa famine of 1865-7. It led to an enquiry presided over by Sir John Campbell and Government, though slow to act, accepted the responsibility of saving life and for that purpose rushed food supply in large quantities. The South Indian Famine of 1876-8 led to the appointment of the First Famine Commission which reported in 1880. Its most important recommendations related to drawing up Famine Codes embodying the main principles of famine relief to be followed in the different provinces. According to that, the able bodied population in a famine area were to be provided with work at a minimum wage sufficient only to keep their body and soul together, and the old and the infirm were given gratuitous relief in the poor-houses. Government was asked to leave the provision of food supply to private agencies and to advance *takhlavi* loans to the landlords in addition to suspensions and remissions of land revenue. In the subsequent famines of 1896-7 and 1899-1900, the Provincial Codes were applied and put to test, a number of improvements had to be made in them in the light of experience gained. A second Famine Commission was appointed in 1897 and a third in 1901. The report of the third Famine Commission recommended the adoption by the Government of "moral strategy" by which it was meant that as soon as the danger signals of a famine became apparent, Government was to "put heart into the people" by suspending

the collection of land revenue, advancing loans and preparing a plan for relief work. The Famine Codes were accordingly further amended with the result that the famines which occurred in the present century, the most important of which was the famine of 1918-20, caused much less suffering or loss of life.

RELIEF MEASURES.

The present measures of famine relief, as embodied in the various provincial codes, are as follows:

"In ordinary times Government is kept informed of the meteorological conditions and the state of the crops; programmes of suitable relief works are kept up-to-date, the country is mapped into relief circles, reserves of tools and plant are stocked. If the rains fail, policy is at once declared, non-officials are enlisted, revenue suspended and loans for agricultural purposes made. Test works are then opened, and if labour in considerable quantities is attracted, they are converted into relief works on Code principles. Poor houses are opened and gratuitous relief given to the infirm. On the advent of the rains the people are moved from the large works to small works near their villages, liberal advances are made to agriculturists for the purchase of plough, cattle and seed. When the principal autumn crop is ripe, the few remaining works are gradually closed and gratuitous relief ceases. All this time the medical staff is kept in readiness to deal with cholera which so often accompanies famine, and malaria which generally supervenes when the rains break."*

* Indian Year Book, 1929-30, p. 374

FAMINE RELIEF
FUNDS

In order to finance the relief of famines, the Government of India introduced in 1878 a Famine Insurance Grant by which every year a sum of Rs 1½ crores was set aside in the Government of India Budget to be spent on relief of Famine, if any, or on the construction of public works of a protective character in a normal year. As time passed the responsibility of contributing to this Grant was partly shifted to the provinces, the Provincial Governments being asked to bear one-third of the expenditure, this continued up to 1919. After the Reforms, famine relief was made a provincial subject and the Provincial Governments were therefore required to provide their own money. Each Government was asked to contribute a fixed sum, in proportion to its liability for famine, to constitute a Famine Insurance Fund. The name and character of this fund were changed in 1928-29 when it was called Famine Relief Fund, to be spent only on relief proper and not on any measure of prevention. The new constitution introduced in April 1937 has led to the transfer of their respective balances to the different provinces which are now given full responsibility in the matter.

4. ULTIMATE CAUSES AND REMEDIES

While the machinery of famine relief has been perfected and funds have been provided for financing such relief, the problem of famine must be traced to its ultimate causes and only such remedies as strike at the root of those causes can be regarded as leading to a satisfactory solution of the problem. It is one thing to "cure" and another to "prevent", and since prevention is always better than cure, the ulti-

mate solution of the problem of famines in India rests on the development of irrigation, multiplication of means of communication, diversification of industries, removal of rural indebtedness, development of co-operation and a thousand other things that would annihilate the appalling poverty of the people in India and raise their standard of living.

A P P E N D I X

N O T E

I had intended to add an Appendix on the *nature and constitutional implications* of Dominion Status but had to refrain from doing so at the last moment due to the limited space at my disposal and the changing character of the relations between the Dominions and Great Britain since the outbreak of war.

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